
THE IMPEACHMENT REPORT



**A GUIDE TO
CONGRESSIONAL PROCEEDINGS
IN THE CASE OF
RICHARD M. NIXON,
PRESIDENT OF THE UNITED STATES**

**THE ARTICLES OF IMPEACHMENT
AS RECOMMENDED BY
THE HOUSE JUDICIARY COMMITTEE,
PETER W. RODINO, JR.,
CHAIRMAN**

**INCLUDING
THE COMMITTEE DEBATE AND VOTE
AND ESSENTIAL
BACKGROUND INFORMATION, EDITED
BY THE STAFFS OF**



**THE
WORLD
ALMANAC**

FULLY INDEXED



**FOR THE FIRST TIME
IN 106 YEARS,
THIS QUESTION MUST BE
ANSWERED:**

**Is There Enough Evidence
to Impeach the President?**

The historic documents reproduced here include, for the first time in any book, the complete Articles of Impeachment as voted out of the House Committee on the Judiciary, with the supporting information from the official records.

Here are:

- The texts of relevant official Statements of Information, with supporting evidence, from the large number of volumes published by the Committee.
- The texts of relevant Statements of Information submitted by James St. Clair, Counsel to the President.
- Excerpts from the public debate in the Judiciary Committee.
- The historical and legal background needed to understand the process of impeachment.
- An explanation of the steps to be taken in the House of Representatives, and the trial procedures of the Senate.
- A wealth of other information, including key Committee votes and more. . . .

This historic book is the first ever to be produced by long distance electronic editing. Editing was done in New York and Washington, with the type being set in Memphis concurrently with the Judiciary Committee hearings. The publishers are grateful for the cooperation of Mr. W. Frank Aycock, Jr., President of the Memphis Publishing Company, and the members of the production, composing and engraving room staffs of The Memphis Commercial Appeal and The Memphis Press-Scimitar whose motto is

"Give light and the people will find their own way."

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**COMPILED AND EDITED BY
THE STAFFS OF
UNITED PRESS INTERNATIONAL
and
THE WORLD ALMANAC**



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TIMES MIRROR

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EDITORS' NOTE

For the first time in 106 years a President of the United States is involved in an impeachment proceeding. It seems essential that the public have at hand the most important points of information and evidence in the case, as well as the key points in the public debate in the Committee. In this volume we have done our best to meet this need.

The Statements of Information as released by the House Judiciary Committee are statements of fact documented by over two dozen volumes of evidence, many of them large. No one person, in a short space of time, could hope to master so much detailed material. And no one editor could hope, even in a week or two, to excerpt for a single volume, such as this one, exactly the needed pieces of evidence and Statements of Information. So the preparation of *The Impeachment Report* has necessarily been a group effort.

The reader is invited to note carefully that while it may be that a given witness testified to a certain thing, what the witness testified to is not necessarily fact, that is to say, proven. The Statements of Information appear to have been prepared with just such a limitation in mind. Thus, when a given Statement draws attention to a particular event which has been testified to by only one witness, and no supporting documentation exists, it carefully states as fact only that the given witness so testified. In the original volumes, very many statements are backed up with memoranda, affidavits, testimony, tape transcripts, and a wealth of other documents. We have selected only the most critical for this volume.

Where inconsistencies of style appear, as between one official document and another, the editors felt it more important to preserve the integrity of the original texts than to follow one style throughout.

Finally, the numbered paragraphs in the Statements of Information relate to events in chronological order, and are followed in some cases by items of evidence which document the statement. And we note here for the first time, and repeatedly further along, that Statement of Information paragraphs were numbered consecutively by the Committee staff. The paragraphs presented in this book relate directly to possible presidential knowledge or action, and retain their original numbers; the omissions are intentional.

THE CRISIS: AN INTRODUCTION

***By Helen Thomas,
U.P.I. White House Reporter***

Of all the crises in the life of Richard M. Nixon, the latest — the one that began with Watergate and may soon lead to his impeachment and trial — is by far the most serious for himself, and the one of the greatest historical importance.

Events that at first were not known to have any connection with the White House were traced to several of the President's men, including some who were most closely identified with him. And Watergate turned out to be only the first item on a list of scandals that gripped the nation: the dairy fund, the ITT allegations, improper use of government agencies, including the Internal Revenue Service, the FBI, the CIA.

As the investigations went forward, the President's critics increasingly linked his name in an ever more direct fashion with alleged misdeeds. Soon he was being accused of direct involvement and, in other cases, of the strongest kind of indirect participation in the scandals.

Motions to impeach the President were referred to the House Committee on the Judiciary, which studied the evidence and weighed the seriousness of each charge at great length. Finally, articles accusing the President of high crimes and misdemeanors were voted through the Committee and referred back to the full House for action. In all our history, only one other president, Andrew Johnson, ever had formal Articles of Impeachment drawn up against him—and that was 106 years ago.

The Watergate scandal struck at a time when Nixon was riding the crest of a career marked alternately by highs and lows, triumphs and defeats. After eight years as a "loser," he made a brilliant political comeback in 1968 and achieved a childhood dream by becoming the 37th President of the United States.

His first term saw dramatic diplomatic breakthroughs that opened doors to new and friendly relations with China and the Soviet Union, breakthroughs that were applauded around the world as foreshadowing a new era of peace.

But at home, the Nixon Administration was under siege. For four and a half years, vociferous, sometimes violent protesters periodically swarmed through the Capital's streets, surrounding the White House, demanding an end to the Vietnam War.

The President saw the protests as an effort to force his hand, to compel him to settle for less than what he called "peace with honor." And like his predecessor, Lyndon B. Johnson, Nixon vowed not to be the first U.S. President "to lose a war."

Concerned with the threat to his policies, and spurred by theft of the secret Pentagon Papers, the President became obsessed with secrecy. He spoke privately of retaliation against those who would thwart him. His top aides took their cue from his attitude and—with or without his knowledge—undertook to fulfill what they deemed the wishes of the man in the Oval Office.

Nixon, who came to view some elements of the media as his enemy in the 1950's because of their criticism of his role in the Alger Hiss spy case, came more and more to consider the Press as synonymous with the "enemy."

He counted on H. R. Haldeman and John D. Ehrlichman—"my right arm and left arm"—to guard impartially against intrusions by cabinet officers, members of Congress and politicians. Nixon probably feels now that this was an error. While such visitors take up valuable time, they also give the President a perspective on the national attitude.

"We are going to see that he gets lots of rest," was one of the first things Mrs. Nixon said when her husband took over the White House.

That fitted the Nixon pattern. Presidents are human, and each has his own style. Nixon is and always has been a private man—shy, reserved, isolated, enjoying his retreats at Key Biscayne, Fla., Camp David, Md., and San Clemente, Calif.

Not everything fit the pattern, however. Nixon, the old political pro who always had taken personal charge of his previous campaigns, said later he headed into his 1972 reelection race with a determination that the "presidency should come first and politics second."

Later, he was to wonder why he ever had let Watergate happen.

Even so, Nixon was in daily touch with his political aides, many of whom were to be implicated in Watergate, and they knew he wanted to win big.

Then came the weekend of June 17, 1972, and the break-in into national Democratic party headquarters in the Watergate complex in "Foggy Bottom."

Nixon had just returned from his triumphant Moscow summit and was relaxing in Key Biscayne. Not until he got back to Washington did he learn some of the details of the break-in, earlier dismissed by White House Press Secretary Ronald L. Ziegler as a "third rate burglary."

His election aim was to capture every state and he almost did. His Democratic rival, Sen. George S. McGovern, won only Massachusetts and the District of Columbia.

In the months that immediately followed Watergate, Nixon made only two public statements on the subject. He said surveillance had no place in the electoral system and that no one "presently employed" on the White House staff was involved in the "bizarre incident."

In short, he said he saw no problem for the White House until he was told by former White House Counselor John W. Dean, later to become Nixon's chief accuser, that there was a "cancer growing on the presidency."

On April 30, 1973, Nixon's worst fears had come to reality. The White House announced the resignations of Haldeman and Ehrlichman along with Attorney General Richard G. Kleindienst. In a nationwide broadcast that night, Nixon denied personal involvement in the Watergate break-in or cover-up, but said as President he accepted responsibility.

His voice quivering, his hands shaking, Nixon also pledged that "justice will be pursued, fairly, fully and impartially, no matter who is involved."

But that was only the beginning. Watergate had a momentum of its own, and the White House became the eye of the storm as Watergate revelation followed revelation.

After accepting the resignations of Haldeman and Ehrlichman, "two of the finest public servants it has ever been my privilege to know," Nixon almost disappeared from public view. He appeared very downcast, seeking solace from his family and closest friends.

And now the Judiciary Committee's report and proposed Articles of Impeachment are on their way to the full House of Representatives for a determination which can be most closely compared in criminal law to grand jury action.

If the House follows the recommendation of its Commit-

tee by voting that the President be impeached, his future in office will hang on the outcome of a full-dress trial in the United States Senate. This leaves to one side any possibility that he will in the meantime decide he has had enough, and resign; that is something he has said that he will not do no matter how rough the going may be.

THE FIRST ARTICLE OF IMPEACHMENT



ARTICLE I

In his conduct of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

On June 17, 1972, and prior thereto, agents of the Committee for the Re-Election of the President committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon, using the powers of his high office, engaged personally and through his subordinates and agents in a course of conduct or plan designed to delay, impede and obstruct investigations of such unlawful entry; to cover up, conceal and protect those responsible and to conceal the existence and scope of other unlawful covert activities.

The means used to implement this course of conduct or plan have included one or more of the following:

(1)

Making or causing to be made false or misleading statements to lawfully authorized investigative officers and employes of the United States.

(2)

Withholding relevant and material evidence or information from lawfully authorized investigative officers and employes of the United States.

(3)

Approving, condoning, acquiescing in, and counseling witnesses with respect to the giving of false or misleading statements to lawfully authorized investigative officers and employes of the United States and false or misleading testimony in duly instituted judicial and congressional proceedings.

(4)

Interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, the office of Watergate Special Prosecution Force and congressional committees.

(5)

Approving, condoning, and acquiescing in, the surreptitious payment of substantial sums of money for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such unlawful entry and other illegal activities.

(6)

Endeavoring to misuse the Central Intelligence Agency, an agency of the United States.

(7)

Disseminating information received from officers of the Department of Justice of the United States to subjects of investigations conducted by lawfully authorized investigative officers and employes of the United States for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability.

(8)

Making false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation has been conducted with respect to allegations of misconduct on the part of personnel of the Executive Branch of the United States and personnel of the Committee for the Re-Election of the President, and that there was no involvement of such personnel in such misconduct; or

(9)

Endeavoring to cause prospective defendants, and individuals duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony, or rewarding individuals for their silence or false testimony.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

The Statements of Information and evidence are taken from Judiciary Committee Books II, III, and IV, which relate to Watergate, and from Book I of the President's Counsel's Statements on Behalf of the President. Also related to Article I are excerpts from Book IX, dealing with the President's relationship to the Special Prosecutor.

Statement of Information paragraphs were numbered consecutively by the Committee staff. Those presented here relate directly to possible presidential knowledge or action, and retain their original numbers.

Statements of Information and Essential Evidence Relating to Article I

BOOK II: THE OFFICIAL INVESTIGATION

The following Statements of Information and related evidence are taken from Book II of the House Judiciary Committee publications. Book II, composed of one volume, outlines the process of the official investigation of the Watergate break-in and relates most specifically to Sections 2, 4, 6, and 8 of The First Article of Impeachment.

5. In the late afternoon of June 17, 1972 Secret Service Agent Boggs telephoned John Ehrlichman, Assistant to the President, and told him that one of the persons arrested at the DNC headquarters had in his possession a document referring to Howard Hunt, who apparently was a White House employee. Later that day, Ehrlichman telephoned Ronald Ziegler, the President's press secretary, who was with the Presidential party in Florida. Ehrlichman told Ziegler the substance of his telephone conversation with Agent Boggs. Ehrlichman also telephoned Charles Colson, Special Counsel to the President, and discussed Hunt's White House employment status.

8. On June 18, 1972 John Ehrlichman spoke by telephone with H.R. Haldeman. They discussed the break-in at the DNC headquarters, the involvement of James McCord, and the fact of Hunt's name being involved.

11. In the morning or early afternoon of June 19, 1972 Ehrlichman told John Dean to look into the question of White House involvement in the break-in at the DNC and to determine Howard Hunt's White House employment status. Dean has testified that he then spoke to Charles Colson regarding Colson's knowledge of the break-in and Hunt's status and that Colson denied knowledge of the event, but expressed concern over the contents of Hunt's safe. Dean has also testified that he spoke to Gordon Liddy, who advised of his and Magruder's involvement in the planning and execution of the break-in. Thereafter Ehrlichman received a report from Dean that Dean had spoken to Liddy and to law

enforcement officials, that law enforcement officials were aware that the matter went beyond the five persons who were apprehended, that Liddy was involved, and that there was a further direct involvement of the CRP.

12. On June 19, 1972 the President telephoned Charles Colson from Florida and spoke with him for approximately one hour ending shortly before noon. The break-in at the DNC headquarters was discussed.

13. On June 19, 1972 Howard Hunt went to the Executive Office Building and reviewed the contents of his safe. He determined that the contents included cables Hunt had fabricated indicating a relationship between the Kennedy Administration and the assassination of Vietnamese President Diem, materials relating to Gemstone, James McCord's electronic equipment, and other material. Hunt thereupon informed Charles Colson's secretary, Joan Hall, that Hunt's safe contained sensitive materials.

26. On June 21, 1972 shortly after 9:35 a.m. John Ehrlichman told Acting FBI Director Gray that John Dean would be handling an inquiry into Watergate for the White House and that Gray should call Dean and work closely with him. Gray told Ehrlichman that the FBI was handling the case as a "major special with all of our normal procedures in effect." At 10:00 a.m. Gray telephoned Dean and arranged to meet Dean at 11:30 a.m. in Gray's office. At the meeting they discussed the sensitivity of the investigation, and Dean told Gray that Dean would sit in on FBI interviews of White House staff members in his official capacity as counsel to the President.

29. On or about June 22, 1972 Acting FBI Director L. Patrick Gray met with John Dean. Gray told Dean the FBI had discovered that a \$25,000 check drawn by Kenneth Dahlberg and four checks totalling \$89,000 drawn on a bank in Mexico City payable to Manuel Ogarrio had been deposited in a Miami, Florida bank account of Bernard Barker, one of the persons arrested on June 17, 1972 at the DNC headquarters in the Watergate. Gray and Dean discussed the FBI's alternative theories of the Watergate case, including the theory that the break-in was a covert operation of the CIA. Either that same day or the following morning Dean reported to Haldeman on his meeting with Gray, and Haldeman in turn transmitted the essence of the report to the President.

31. On June 23, 1972 H.R. Haldeman met with the President and informed the President of the communication John Dean had received from Acting FBI Director Gray. The President directed Haldeman to meet with CIA Director Richard Helms, Deputy CIA Director Vernon Walters and

John Ehrlichman. Haldeman has testified that the President told him to ascertain whether there had been any CIA involvement in the Watergate affair and whether the relationship between some of the Watergate participants and the Bay of Pigs incident was a matter of concern to CIA. The President directed Haldeman to discuss White House concern regarding possible disclosure of covert CIA operations and operations of the White House Special Investigations Unit (the "Plumbers"), not related to Watergate, that had been undertaken previously by some of the Watergate principals. The President directed Haldeman to ask Walters to meet with Gray to express these concerns and to coordinate with the FBI, so that the FBI's investigation would not be expanded into unrelated matters that could lead to disclosure of the earlier activities of the Watergate principals.

33. At approximately 1:30 p.m. on June 23, 1972 pursuant to the President's prior directions, H.R. Haldeman, John Ehrlichman, CIA Director Helms and Deputy CIA Director Walters met in Ehrlichman's office. Helms assured Haldeman and Ehrlichman that there was no CIA involvement in the Watergate and that he had no concern from the CIA's viewpoint regarding any possible connections of the Watergate personnel with the Bay of Pigs operation. Helms told Haldeman and Ehrlichman that he had given this assurance directly to Acting FBI Director Gray. Haldeman stated that the Watergate affair was creating a lot of noise, that the investigation could lead to important people, and that this could get worse. Haldeman expressed concern that an FBI investigation in Mexico might uncover CIA activities or assets. Haldeman stated that it was the President's wish that Walters call on Gray and suggest to him that it was not advantageous to push the inquiry, especially into Mexico. According to Ehrlichman, the Mexican money or the Florida bank account was discussed as a specific example of the kind of thing the President was evidently concerned about.

42. On June 28, 1972 Gray directed that the FBI interview Manuel Ogarrio and continue its efforts to locate and interview Kenneth Dahlberg. On that evening John Dean telephoned Gray at home and urged that, for national security reasons or because of CIA interest, efforts to interview Ogarrio and Dahlberg be held up. Gray thereafter cancelled the interviews.

43. On June 28, 1972 FBI agents met with Gordon Liddy, in the presence of FCRP attorney Kenneth Parkinson, to question Liddy regarding the break-in at the DNC headquarters. When Liddy declined to answer the agents' questions,

he was discharged by FCRP Chairman Maurice Stans.

46. On June 30, 1972 the President met with H. R. Haldeman and John Mitchell. A portion of their discussion related to the Watergate break-in.

HALDEMAN: Well, there maybe is another facet. The longer you wait the more risk each hour brings. You run the risk of more stuff, valid or invalid, surfacing on the Watergate caper — type of thing —

MITCHELL: You couldn't possibly do it if you got into a —

HALDEMAN: — the potential problem and then you are stuck —

PRESIDENT: Yes, that's the other thing, if something does come out, but we won't — we hope nothing will. It may not. But there is always the risk.

HALDEMAN: As of now there is no problem there. As, as of any moment in the future there is at least a potential problem.

PRESIDENT: Well, I'd cut the loss fast. I'd cut it fast. If we're going to do it I'd cut if fast. That's my view, generally speaking. And I wouldn't — and I don't think, though, as a matter of fact, I don't think the story, if we, if you put it in human terms — I think the story is, you're positive rather than negative, because as I said as I was preparing to answer for this press conference, I just wrote it out, as I usually do, one way — terribly sensitive (unintelligible). A hell of a lot of people will like that answer. They would. And it'd make anybody else who asked any other question on it look like a selfish son-of-a-bitch, which I thoroughly intended them to look like.

*** (Committee Staff deletion)

* * * * *
MITCHELL: (Unintelligible) Westchester Country Club with all the sympathy in the world.

PRESIDENT: That's great. That's great.

MITCHELL: (Unintelligible) don't let —

HALDEMAN: You taking this route — people won't expect you to — be a surprise.

PRESIDENT: No — if it's a surprise. Otherwise, you're right. It will be tied right to Watergate. (Unintelligible) tighten if you wait too long, till it simmers down.

HALDEMAN: You can't if other stuff develops on Watergate. The problem is, it's always potentially the same thing.

PRESIDENT: Well if it does, don't just hard-line.

HALDEMAN: (Unintelligible) That's right. In other words, it'd be hard to hard-line Mitchell's departure under —

PRESIDENT: That's right. You can't do it. I just want it to be handled in a way Martha's not hurt.

MITCHELL: Yeah, okay.

48. On July 5, 1972 at 5:54 p.m. Acting FBI Director Gray phoned Deputy CIA Director Walters and stated that, unless the CIA provided by the following morning a written rather than the verbal request to refrain from interviewing Manuel Ogarrio and Kenneth Dahlberg, the FBI would go forward with those interviews. At 10:05 a.m. on July 6, 1972 Walters met with Gray and furnished Gray a memorandum indicating that the CIA had no interest in Ogarrio or Dahlberg. Gray then ordered that Ogarrio and Dahlberg be interviewed. At 10:51 a.m. Gray called Clark MacGregor, Campaign Director of CRP, who was with the President at San Clemente, California. Gray has testified that he asked MacGregor to tell the President that Gray and Walters were uneasy and concerned about the confusion during the past two weeks in determining whether the CIA had any interest in people whom the FBI wished to interview in connection with the Watergate investigation. Gray also has testified that he asked MacGregor to tell the President that Gray felt that people on the White House staff were careless and indifferent in their use of the CIA and FBI, that this activity was injurious to the CIA and the FBI, and that these White House staff people were wounding the President. MacGregor has denied both receiving this call and the substance of it as related by Gray, but has testified to receiving a call from Gray on another subject the previous evening or possibly that morning. (By letter of July 25, 1973 to Archibald Cox, J. Fred Buzhardt stated that the President's logs do not show any conversations or meetings between the President and Clark MacGregor on July 6, 1972. The President's log for that date shows meetings between the President and MacGregor from 10:40 a.m. to 12:12 p.m., Pacific time.) At 11:28 a.m. the President telephoned Gray. Gray told the President that he and Walters felt that people on the President's staff were trying to mortally wound the President by using the CIA and the FBI. The President responded by instructing Gray to continue to press ahead with the investigation.

52. At the end of August 1972 John Ehrlichman met with the President and discussed what public statements the President should make about the White House and CRP involvement in the June 17th break-in. The President decided that he would state that there was no involvement of present White House employees. On August 29, 1972 in a press conference the President stated that John Dean, under the President's direction, had conducted a complete investigation of all leads

that might involve any present members of the White House staff or anybody in the Government. The President said, "I can say categorically that his investigation indicates that no one in the White House staff, no one in this Administration, presently employed, was involved in this very bizarre incident." John Dean has denied conducting that investigation. The President also stated that the FBI and the Department of Justice had had the total cooperation of the White House and that CRP was continuing its investigation.

53. On September 15, 1972 the President met with H. R. Haldeman and John Dean. Certain subjects were discussed in the course of the September 15, 1972 meeting:

- Filing of indictment against seven Watergate defendants
- Manner in which Dean has handled Watergate matter
- Human frailties and bitterness between Finance Committee and Political Committee
- Governmental power and political opponents
- White House and Watergate matter

Transcript of September 15, 1972 Meeting, Prepared by the Impeachment Inquiry Staff

PRESIDENT: (Unintelligible)

HALDEMAN: John, he is one of the quiet guys that gets a lot done. That was a good move, too, bringing Dean in. But it's —

PRESIDENT: It — He'll never, he'll never gain any ground for us. He's just not that kind of guy. But, he's the kind that enables other people to gain ground while he's making sure that you don't fall through the holes.

PRESIDENT: Oh. You mean —

HALDEMAN: Between times, he's doing, he's moving ruthlessly on the investigation of McGovern people, Kennedy stuff, and all that too. I just don't know how much progress he's making, 'cause I —

PRESIDENT: The problem is that's kind of hard to find.

* * * * *

(Dean enters room.)

PRESIDENT: Hi, how are you?

DEAN: Yes sir.

PRESIDENT: Well, you had quite a day today, didn't you? You got, uh, Watergate, uh, on the way, huh?

DEAN: Quite a three months.

HALDEMAN: How did it all end up?

DEAN: Uh, I think we can say "Well" at this point. The, uh, the press is playing it just as we expect.

HALDEMAN: Whitewash?

DEAN: No, not yet; the, the story right now —

PRESIDENT: It's a big story.

DEAN: Yeah.

PRESIDENT: (Unintelligible)

HALDEMAN: Five indicted,

DEAN: Plus,

HALDEMAN: They're building up the fact that one of—

DEAN: plus two White House aides.

HALDEMAN: Plus, plus the White House former guy and all that. That's good. That, that takes the edge off whitewash really — which — that was the thing Mitchell kept saying that,

PRESIDENT: Yeah.

HALDEMAN: that to those in the country, Liddy and, and, uh, Hunt are big men.

DEAN: That's right.

PRESIDENT: Yeah. They're White House aides.

DEAN: That's right.

HALDEMAN: And maybe that — Yeah, maybe that's good.

* * * * *

DEAN: Three months ago I would have had trouble predicting where we'd be today. I think that I can say that fifty-four days from now that, uh, not a thing will come crashing down to our, our surprise.

PRESIDENT: Say what?

DEAN: Nothing is going to come crashing down to our surprise, either —

PRESIDENT: Well, the whole thing is a can of worms. As you know, a lot of this stuff went on. And, uh, and, uh, and the people who worked (unintelligible) awfully embarrassing. And, uh, and, the, uh, but the, but the way you, you've handled it, it seems to me, has been very skillful, because you — putting your fingers in the dikes every time that leaks have sprung here and sprung there. (Unintelligible) having people straighten the (unintelligible).

* * * * *

54. On October 5, 1972 the President held a press conference. He stated that the FBI had conducted an intensive investigation of Watergate because "I wanted to be sure that no member of the White House staff and no man or woman in a position of major responsibility in the Committee for Re-Election had anything to do with this kind of reprehensible activity."

BOOK III: BLACKMAIL, CLEMENCY AND PERJURY

The following Statements of Information and related evidence are taken from Book III of the House Judiciary Committee publications. Book III, composed of two volumes, deals with allegations concerning payment of hush money, offers of leniency and executive clemency, and the making of false statements. Book III relates most specifically to Sections 1, 3, 5, and 9 of the First Article of Impeachment.

7. On June 28, 1972 John Ehrlichman met with John Dean at the White House. Ehrlichman approved Dean's contacting Herbert Kalmbach, the President's personal attorney and a Presidential campaign fundraiser, to ask Kalmbach to raise funds for the Watergate defendants. Kalmbach flew to Washington during the night of June 28, 1972, and the following morning Dean met Kalmbach and asked Kalmbach to raise and distribute such funds. Dean indicated that Kalmbach should raise from \$50,000 to \$100,000, and Kalmbach accepted this assignment. Kalmbach has testified that he acted in the belief that these payments were necessary to discharge a moral obligation that had arisen in some manner unknown to him by reason of earlier events.

9. On June 29, 1972, after Kalmbach agreed to undertake the fund-raising assignment, he telephoned Maurice Stans and told him he needed from \$50,000 to \$100,000 for an important and confidential White House assignment. Later that day Stans delivered \$75,000 in \$100 bills to Kalmbach in Kalmbach's hotel room. The next day Kalmbach delivered the funds to Anthony Ulasewicz, who previously had undertaken assignments for the White House. Kalmbach told him that the funds were for the Watergate defendants; that the payments would be in absolute secrecy and that contact between Kalmbach and Ulasewicz would be from phone booths using alias names.

11. In early July 1972 the President met with John Ehrlichman. Ehrlichman has testified that they discussed executive clemency with respect to those who might be indicted in connection with the break-in at the DNC headquarters, and that the President told him that he wanted no one in the White House to get into the area of executive clemency with anyone involved in the Watergate case and that no assurances of executive clemency should be made to anyone. At

the time of this discussion with Ehrlichman, the President was aware that Howard Hunt had "surfaced" in connection with the Watergate break-in and was a former member of the Special Investigations Unit in the White House (the "Plumbers"). The President was concerned that the FBI investigation of the break-in not expose the activities of that unit.

13. On July 5, 1972 John Mitchell was interviewed by agents of the FBI and stated to them that he had no knowledge of the break-in at the DNC headquarters other than what he had read in newspaper accounts of that incident. Mitchell has testified that prior to the time he was interviewed by the FBI he received a report from Robert Mardian and Fred LaRue of a conversation they had with Gordon Liddy in which Liddy described his role in the Watergate break-in; but he was not sure this information was correct when he was interviewed by the FBI on July 5, 1972 and he was not volunteering any information under any circumstances.

32. In November 1972 Howard Hunt telephoned Charles Colson. Colson recorded the conversation. Hunt discussed with Colson the need to make additional payments for the defendants in United States v. Liddy. Hunt said:

"(T)his is a long haul thing and the stakes are very, very high and I thought that you would want to know that this thing must not break apart for foolish reasons. . . .

"We're protecting the guys who are really responsible . . . but at the same time, this is a two way street and as I said before, we think that now is the time when a move should be made and surely the cheapest commodity available is money."

Colson gave a tape recording of the conversation to John Dean. Dean has testified that on or about November 15, 1972 he met with John Ehrlichman and H.R. Haldeman at Camp David, Maryland and played the recording for them. Ehrlichman has testified that he does not recall ever hearing the recording. Dean also has testified that immediately after the meeting at Camp David, he met with John Mitchell regarding the defendants' money demands and played the recording for him.

33. On or about December 1, 1972 William Bittman, Howard Hunt's attorney, gave a folded paper to CRP attorney Kenneth Parkinson. Parkinson gave it to John Dean and to Fred LaRue. In or around early December 1972 Dean had a discussion with Haldeman about CRP's need for funds for the defendants in United States v. Liddy, during which Haldeman approved the transfer to CRP of a cash fund of \$350,000 in campaign contributions which had been placed at

the disposal of the White House at Haldeman's direction prior to April 7, 1972. The first portion of between \$40,000 and \$70,000 was delivered by Haldeman's assistant Gordon Strachan to LaRue. Shortly thereafter LaRue delivered \$40,000 to Bittman by messenger. In January 1973 the remaining \$280,000 was delivered to LaRue. In January 1973 FCRP Director Maurice Stans approved the transfer of \$14,000 or \$17,000 in campaign funds to LaRue.

44. On or about February 14, 1973 Magruder met with Haldeman and discussed Magruder's possible future employment. Prior to this meeting Hugh Sloan had told John Dean that because of Jeb Magruder's suggestion to Sloan in June 1972 that Sloan perjure himself regarding the funds paid to Gordon Liddy by CRP, Sloan would testify against Magruder if Magruder should be nominated for a high government office. On or about February 19, 1973 Dean met with Haldeman, and he thereafter drew up an agenda of matters to be discussed and resolved at a meeting between Haldeman and the President. In that agenda it was stated that Magruder wanted to return to the White House; that Magruder "may be vulnerable (Sloan) until Senate hearings are completed;" and that Magruder "personally is prepared to withstand confirmation hearings." On February 23, 1973 Sloan met with Haldeman. According to Sloan, Haldeman told Sloan that no individual who had become a prominent figure in the Watergate matter would be placed in a high government position. On March 2, 1973 Magruder met with Haldeman and Dean. At this meeting Magruder was offered and subsequently accepted the position of Deputy Under-Secretary of Commerce for Policy Development, a Level IV government position carrying an annual salary of \$36,000.

46. Dean has testified that prior to February 27, 1973 that he told Ehrlichman that he would not be able to assert executive privilege since he had so little personal contact with the President. On February 27, 1973 the President met with John Dean and directed him to assume responsibility for Watergate-related matters. Both Haldeman and Ehrlichman have testified that the President believed that they were spending too much of their time on Watergate matters. Dean has testified that at this meeting the President instructed Dean to report directly to him on all Watergate matters. There was discussion of preparation for the Senate Select Committee on Presidential Campaign Activities hearings, which included a discussion of the President's meetings with Senator Howard Baker, of executive privilege, of the minority counsel to the Select Committee, and whether the White House staff would be permitted to testify before the Select Committee. Dean

testified that the President stated he would not permit White House staff members to appear before the Select Committee, but would only permit the answering of written interrogatories.

47. On February 28, 1973 the President met with John Dean. The following is an index to certain of the subjects discussed in the course of that meeting:

- Executive privilege, written interrogatories and forthcoming hearings of Senate Select Committee
- Wiretapping and domestic surveillance
- Sentencing of seven Watergate defendants
- Clemency and the Watergate defendants
- White House position with respect to Watergate trial and appeals
- Segretti, Chapin and political intelligence
- Kalmbach as a witness
- White House and Watergate matter
- Role of CRP and John Mitchell in Watergate matter

Transcript of February 28, 1973 Meeting, Prepared by the Impeachment Inquiry Staff

PRESIDENT: What is the situation, incidentally, with regard to the, the sentencing of our, of the people, the seven? When the hell is that going to occur?

DEAN: That's likely to occur, I would say, (sighs) could occur as early as late this week, more likely sometime next week.

PRESIDENT: Why has it been delayed so long?

DEAN: Well, they, they've been in, in process of preparing the pre-sentence report. The Judge sends out probation officers to find out everybody who knew

PRESIDENT: Yeah.

DEAN: these people, and then he'll—

PRESIDENT: He's trying to work on them to break them, is he? (Unintelligible)

DEAN: Well, there's some of that. They are using the probation officer for more than a normal probation report. They are trying to, uh,

PRESIDENT: Yeah.

DEAN: do a mini-investigation by the Judge himself, which is his only investigative tool here, so, they, that, they are virtually completed now.

PRESIDENT: I, I feel for those poor guys in jail, I mean, I don't know — particularly for Hunt. Hunt with his wife, uh, dead. It's a tough thing.

DEAN: Well,

PRESIDENT: We have to do (unintelligible)

DEAN: every indication

PRESIDENT: You will have to do —

DEAN: that they're, they're hanging in tough right now.

PRESIDENT: What the hell do they expect, though? Do they expect that they will get clemency within a reasonable time?

DEAN: I think they do. (Unintelligible) going to do.

PRESIDENT: What would you say? What would you advise on that?

DEAN: Uh, I think it's one of those things we'll have to watch very closely. For example —

PRESIDENT: You couldn't do it, you couldn't do it, say, in six months?

DEAN: No.

PRESIDENT: No.

DEAN: No, you couldn't. This thing may become so political as a result of these

PRESIDENT: Yeah.

DEAN: hearings that it is, it, it, is more —

PRESIDENT: A vendetta?

* * * * *

DEAN: Well, I was, you know, we've gone a long road on this thing now. I had thought it was an impossible task, uh, to hold together until after the election until things just

PRESIDENT: Yeah.

DEAN: started squirting out, but we've made it this far, and, uh, I'm convinced we're going to make it the whole road and put this thing in, in, in, uh, the funny pages of the, of the history books rather than anything serious. We've got to. It's got to be that way.

PRESIDENT: Would it — it'll be somewhat serious, but the main thing, of course, is also the, the isolation of the President from this.

DEAN: Absolutely.

PRESIDENT: Because it's, because that, fortunately, is totally true.

DEAN: I know that sir.

PRESIDENT: Good God almighty. I mean, of course, I'm not dumb, and I will never forget when I heard about this God damned thing (unintelligible) Jesus Christ, what in the hell is this? What's the matter with these people? Are they crazy? I thought they were nuts. You know, that it was a prank. But it wasn't. It was really something. I think that our Democratic friends know that's true, too. They know what the hell

DEAN: I think they do too.

PRESIDENT: this was. I mean they know that we then wouldn't be involved in such — they'd think others were capable of it, however. I think — and they are correct: They think Colson would do anything. (Laughs)

49. On March 1, 1973 the President met three times with John Dean in the Oval Office—from 9:18 to 9:46 a.m., from 10:36 to 10:44 a.m. and from 1:06 to 1:14 p.m. The President decided that the White House would explain publicly that Dean sat in on FBI interviews because he was conducting an investigation for the President.

50. On March 2, 1973 President Nixon explained at a press conference that John Dean had access to FBI interviews in July and August 1972 because he had conducted an investigation at the direction of the President. The President stated that Dean's investigation showed that no one on the White House staff in July and August at the time Dean conducted his investigation had knowledge of or was involved in the Watergate matter. The President promised to cooperate with the Senate Select Committee if it conducted its investigation in an even-handed way. The President stated that because of executive privilege, no President could ever agree to allow the Counsel to the President to testify before a Congressional committee. The President said that if the Congress requested information from a member of the White House staff, arrangements would be made to provide that information.

53. On or about March 7, 1973 L. Patrick Gray and John Ehrlichman had a telephone conversation. Gray told Ehrlichman that he was being pushed awfully hard in certain areas and was not giving an inch, and that Ehrlichman knew those areas. Gray also told Ehrlichman to tell Dean to be very careful about what he said and to be absolutely certain that he knew in his own mind that he delivered everything he had to the FBI, and not to make any distinction between the recipients of the materials.

54. After the call from Gray, Ehrlichman called Dean. Ehrlichman told Dean that Gray wanted to be sure that Dean would stay very firm and steady on his story that Dean had delivered every document to the FBI and that Dean not start making nice distinctions between agents and directors. Ehrlichman also told Dean that he thought they ought to let Gray hang there and "twist slowly, slowly in the wind." Dean agreed and said, "I was in with the boss this morning and that is exactly where he was coming out."

58. On March 13, 1973 the President met with John Dean from 12:42 to 2:00 p.m. The following is an index to certain

of the subjects discussed in the course of the March 13, 1973 meeting:

- Advisability of public disclosure.
- Possible public testimony of Sloan, Kalmbach, Stans and Mitchell.
- The pre-June 1972 role of Gordon Strachan in Watergate and Strachan's statements to investigators
- The pre-June role of Jeb Magruder in Watergate
- John Mitchell, H. R. Haldeman and Gordon Liddy's intelligence program at CRP

Transcript of March 13, 1973 Meeting, Prepared by the Impeachment Inquiry Staff

* * * * *

PRESIDENT: Who is going to be the worst witness up there?

DEAN: Sloan.

PRESIDENT: Unfortunate.

DEAN: Without a doubt. He's —

PRESIDENT: He's scared?

DEAN: He's scared. He's weak. He has a, uh, a compulsion to, uh, cleanse his soul by confession. Now, we're, he's going, we're giving him a lot of stroking, uh, telling him you're doing a beautiful job. The funny thing is, this fellow goes down to the Court House here before Sirica, testifies (laughs) as honestly as he can testify, and Sirica looks around and calls him a liar. (Laughs) he's a sad — Sloan can't win. So Kalmbach has been dealing with Sloan. Sloan (unintelligible) as a child. Kalmbach has done a lot of that. The person that will have the greatest problem with — as a result of Sloan's testimony is Kalmbach and Stans. So they're working closely with him to make sure that he settles down.

PRESIDENT: Kalmbach will be a good witness.

DEAN: Oh yes.

DEAN: Well, Chapin didn't know anything about the Watergate, and —

PRESIDENT: You don't think so?

DEAN: No. Absolutely not.

PRESIDENT: Did Strachan?

DEAN: Yes.

PRESIDENT: He knew?

DEAN: Yes.

PRESIDENT: About the Watergate?

DEAN: Yes.

PRESIDENT: Well, then, Bob knew. He probably told

Bob, then. He may not have. He may not have.

DEAN: He was, he was judicious in what he, in what he relayed, and, uh, but Strachan is as tough as nails. I —

PRESIDENT: What'll he say? Just go in and say he didn't know?

DEAN: He'll go in and stonewall it and say, "I don't know anything about what you are talking about." He has already done it twice, as you know, in interviews.

PRESIDENT: Yeah. I guess he should, shouldn't he, in the interests of — why? I suppose we can't call that justice, can we? We can't call it (unintelligible)

* * * * *

PRESIDENT: Uh, is it too late to, to, frankly, go the hang-out road? Yes, it is.

DEAN: I think it is. I think — Here's the — The hang-out road —

PRESIDENT: The hang-out road's going to have to be rejected. I, some, I understand it was rejected.

DEAN: It was kicked around. Bob and I and, and, and—

PRESIDENT: I know Ehrlichman always felt that it should be hang-out. (Unintelligible)

DEAN: Well, I think I convinced him why that he wouldn't want to hang-out either. There is a certain domino situation here. If some things start going, a lot of other things are going to start going, and there are going to be a lot of problems if everything starts falling. So there are dangers, Mr. President. I'd be less than candid if I didn't tell you the — there are. There's a reason for us not — not everyone going up and testifying.

PRESIDENT: I see. Oh no, no, no, no, no. I didn't mean go up and have them testifying. I meant—

DEAN: Well I mean just, they're just starting to hang-out and say here's our, here's our story—

PRESIDENT: I mean putting the story out to PR buddies somewhere. Here's the story, the true story about Watergate. (Unintelligible)

DEAN: They would never believe it.

PRESIDENT: That's the point.

* * * * *

61. On or about March 16, 1973 E. Howard Hunt met with Paul O'Brien, an attorney for CRP. Hunt informed O'Brien that commitments had not been met, that he had done "seamy things" for the White House, and that unless he received \$130,000 he might review his options. On March 16, 1973 Hunt also met with Colson's lawyer, David Shapiro. According to Colson, Hunt requested of Shapiro that Colson

act as Hunt's liaison with the White House, but was told that that was impossible.

62. On March 17, 1973 the President met with John Dean in the Oval Office from 1:25 to 2:10 p.m. (On April 11, 1973 the Committee on the Judiciary subpoenaed the President to produce the tape recording of the March 17 meeting. The President has refused to produce that tape but has furnished an edited partial transcript of the meeting. After having listened to the tape recording of the March 17, 1973 meeting, the President on June 4, 1973 discussed with Press Secretary Ron Ziegler his recollections of that March 17 meeting. A tape recording of the June 4 discussion has been furnished to the Committee. The evidence regarding the content of the March 17 meeting presently possessed by the Committee also includes a summary of the March 17 meeting furnished, in June 1973, to SSC Minority Counsel Fred Thompson by White House Special Counsel Buzhardt and the SSC testimony of John Dean).

In his discussion with Ziegler on June 4, 1973 the President told Ziegler the following regarding the March 17 meeting: Up to March 17, 1973 the President had no discussion with Dean on the basic conception of Watergate, but on the 17th there began a discussion of the substance of Watergate. Dean told the President that Dean had been over this like a blanket. Dean said that Magruder was good, but that if he sees himself sinking he'll drag everything with him. He said no one in the White House had prior knowledge of Watergate, except possibly Strachan. There was a discussion of whether Haldeman or Strachan had pushed on Watergate and whether anyone in the White House was involved. The President said that Magruder put the heat on, and Sloan starts pissing on Haldeman. The President said that "we've got to cut that off. We can't have that go to Haldeman." The President said that looking to the future there were problems and that Magruder could bring it right to Haldeman, and that could bring it to the White House, to the President. The President said that "we've got to cut that back. That ought to be cut out." There was also a discussion of the Ellsberg break-in.

The edited partial transcript of the March 17 meeting supplied by the White House contains only a passage of conversation relating to Segretti and a portion of the conversation relating to the Ellsberg break-in. It contains no discussion of matters relating to Watergate.

63. On March 19, 1973 Paul O'Brien met with John Dean in the EOB and conveyed a message from E. Howard Hunt

that if money for living and for attorneys' fees were not forthcoming, Hunt might have to reconsider his options and might have some very seamy things to say about Ehrlichman.

64. On March 20, 1973 John Ehrlichman met with John Dean at the White House. They discussed Howard Hunt's request for money, the possibility that Hunt would reveal activities of the Plumbers' operations if the money were not forthcoming, and plans for Dean to discuss the matter with John Mitchell. According to Dean, Dean discussed the matter with Mitchell by telephone later that evening, but Mitchell did not indicate whether Hunt would be paid. On the afternoon of March 20, 1973 Ehrlichman had a telephone conversation with Egil Krogh and told him Hunt was asking for a large amount of money. They discussed the possibility that Hunt might publicly reveal the Plumbers' operations. Krogh has testified that Ehrlichman stated that Hunt might blow the lid off and that Mitchell was responsible for the care and feeding of Howard Hunt.

65. On March 20, 1973 Dean had a conversation with Richard Moore, Special Counsel to the President. Dean told Moore that Hunt was demanding a large sum of money before his sentencing on March 23, and that if this payment were not made, Hunt was threatening to say things that would be very serious for the White House. After this conversation, Dean and Moore met with the President from 1:42 to 2:31 p.m. According to information furnished to the Senate Select Committee by Special Counsel Buzhardt, the President and Moore agreed that a statement should be released immediately after the sentencing of the defendants. According to Moore, following this meeting he told Dean that Dean should tell the President what he knew. According to Dean, Dean told Moore that Dean did not think the President understood all of the facts involved in the Watergate and particularly the implication of those facts and that Dean felt he had to lay those facts and implications out for the President.

67. On March 21, 1973 the President met with John Dean from 10:12 to 11:55 a.m. H.R. Haldeman joined the meeting at approximately 11:15 a.m. The following is an index to certain of the subjects discussed in the course of the March 21, 1973 morning meeting:

- Possible involvement of Haldeman, Dean, Mitchell, Magruder, Colson, Strachan and Porter in Watergate matter
- Clemency and Watergate defendants
- Whether money should be paid to E. Howard Hunt

***Transcript of March 21, 1973 Meeting From 10:12—
11:55 a.m., Prepared by the Impeachment Inquiry Staff***

* * * * *

DEAN: Let me give you my overall first.

PRESIDENT: In other words, your, your judgment as to where it stands, and where we go now.

DEAN: I think, I think that, uh, there's no doubt about the seriousness of the problem we're, we've got. We have a cancer—within—close to the Presidency, that's growing. It's growing daily. It's compounding, it grows geometrically now, because it compounds itself. Uh, that'll be clear as I explain, you know, some of the details, uh, of why it is, and it basically is because (1) we're being blackmailed; (2) uh, people are going to start perjuring themselves very quickly that have not had to perjure themselves to protect other people and the like. And that is just—And there is no assurance —

PRESIDENT: That it won't bust.

DEAN: That that won't bust. All right, now, we've gone through the trial. We've—I don't know if Mitchell has perjured himself in the Grand Jury or not. I've never—

PRESIDENT: Who ?

DEAN: Mitchell. I don't know how much knowledge he actually had. I know that Magruder has perjured himself in the Grand Jury. I know that Porter has perjured himself, uh, in the Grand Jury.

PRESIDENT: Porter (unintelligible)

DEAN: He is one of Magruder's deputies.

PRESIDENT: Yeah.

DEAN: Uh, that they set up this scenario which they ran by me. They said, "How about this?" I said, "I don't know. I, you know, if, if this is what you are going to hang on, fine." Uh, that they —

DEAN: Uh, I honestly believe that no one over here knew that (there was to be a Watergate break-in on June 17, 1972). I know, uh, as God is my maker, I had no knowledge that they were going to do this.

PRESIDENT: Bob didn't either (unintelligible)

DEAN: Uh, but —

PRESIDENT: They know you're not the issue. Bob, Bob, now—he wouldn't know.

DEAN: Bob—I don't believe specifically knew they were going in there.

PRESIDENT: I don't think so.

DEAN: I don't think he did. I think he knew there was a

capacity to do this but he wouldn't, wasn't giving it specific direction.

PRESIDENT: Strachan, did he know?

DEAN: I think Strachan did know.

PRESIDENT: They were going back into the DNC? Hunt never (unintelligible)

DEAN: Now, (sighs) what, what has happened post-June 17? Well, it was, I was under pretty clear instructions (laughs) not to really to investigate this, that this was something that just could have been disastrous on the election if it had—all hell had broken loose, and I worked on a theory of containment

PRESIDENT: Sure.

* * * * *

DEAN: Uh, Liddy said, said that, you know, if they all got counsel instantly and said that, you know, "We'll, we'll ride this thing out." All right, then they started making demands. "We've got to have attorneys' fees. Uh, we don't have any money ourselves, and if—you are asking us to take this through the election." All right, so arrangements were made through Mitchell, uh, initiating it, in discussions that—I was present — that these guys had to be taken care of. Their attorneys' fees had to be done. Kalmbach was brought in. Uh, Kalmbach raised some cash. Uh, they were obv—, uh, you know.

PRESIDENT: They put that under the cover of a Cuban Committee or (unintelligible)

DEAN: Yeah, they, they had a Cuban Committee and they had — some of it was given to Hunt's lawyer, who in turn passed it out. This, you know, when Hunt's wife was flying to Chicago with ten thousand, she was actually, I understand after the fact now, was going to pass that money to, uh, one of the Cubans — to meet him in Chicago and pass it to somebody there.

PRESIDENT: (Unintelligible). Maybe — Well, whether it's maybe too late to do anything about it, but I would certainly keep that, (laughs) that cover for whatever it's worth.

* * * * *

DEAN: That's right. Now. The blackmail is continuing. Hunt called one of the lawyers from the Re-election Committee on last Friday to meet with him on—over the weekend. The guy came in to me, to see me to get a message directly from Hunt to me, for the first time.

PRESIDENT: Is Hunt out on bail?

DEAN: Pardon?

PRESIDENT: Is Hunt on bail?

DEAN: Hunt is on bail. Correct. Uh, Hunt now is demanding another seventy-two thousand dollars for his own personal expenses; another fifty thousand dollars to pay his attorneys' fees; a hundred and twenty some thousand dollars. Wants it, wanted it by the close of business yesterday. 'Cause he says, "I am going to be sentenced on Friday, and I've got to be able to get my financial affairs in order." I told this fellow O'Brien, "You came—all right, you came to the wrong man, fellow. I'm not involved in the money. Uh, I don't know a thing about it, can't help you." Said, "You better scramble around elsewhere." Now, O'Brien is O'Brien is, is a ball player. He's been, he's carried tremendous water for us. Uh—

PRESIDENT: He isn't Hunt's lawyer, is he?

DEAN: No he is, he is our lawyer at the Re-election Committee.

PRESIDENT: I see. Good.

DEAN: So he's safe. There's no problem there. But it raises the whole question of Hunt now has made a direct threat against Ehrlichman, as a result of this. This is his blackmail. He says, "I will bring John Ehrlichman down to his knees and put him in jail. Uh, I have done enough seamy things for he and Krogh, uh, that they'll never survive it."

PRESIDENT: What's that, on Ellsberg?

DEAN: Ellsberg, and apparently some other things. I don't know the full extent of it. Uh —

PRESIDENT: I don't know about anything else.

DEAN: I don't know either, and I (laughs) almost hate to learn some of these

PRESIDENT: Yeah.

DEAN: things. So that's, that's the situation. Now, where are the soft points? How many people know about this? Well, uh, well, let me go one step further in this, this whole thing. The Cubans that were used in the Watergate were also the same Cubans that Hunt and Liddy used for this California Ellsberg thing, for the break-in out there.

PRESIDENT: Yeah.

DEAN: So they are, they are aware of that. How high their knowledge is, is something else. Hunt and Liddy, of course, are totally aware of, of, of it, and the fact that, uh, it was right out of the White House.

PRESIDENT: I don't know what the hell we did that for.

DEAN: I don't either. Hunt's lawyer, a man by the name of Bittman, who's an excellent criminal lawyer from the Democratic era of Bobby Kennedy, he's got knowledge. Uh

PRESIDENT: Do you think, do you think, that he's got some? How much?

DEAN: Well, everybody — not only, all the, all the direct knowledge that Hunt and Liddy have, as well as all the hearsay they have.

PRESIDENT: I (unintelligible)

DEAN: Uh, you've got the two lawyers over at the Re-election Committee who did an investigation to find out the facts. Slowly, they got the whole picture. They are, I, they're solid, but they re —

PRESIDENT: But they know.

DEAN: But they know. Uh, you've got, then, an awful lot of — all the principals involved know. Uh, Hunt — Some people's wives know.

PRESIDENT: Sure.

DEAN: Uh, there's no doubt about that. Mrs. Hunt was the savviest woman in the world. She had the whole picture together.

PRESIDENT: Did she?

DEAN: Yeah, it, uh — Apparently, she was the pillar of strength in that family before the death, and, uh—

PRESIDENT: Great sadness. The basis, as a matter of fact (clears throat) there was some discussion over there with somebody about, uh, Hunt's problems after his wife died and I said, of course, commutation could be considered on the basis of his wife, and that is the only discussion I ever had in that light.

DEAN: Right. Uh, so that, that's it. That's the, the extent of the knowledge. Now, where, where are the soft spots on this? Well, first of all, there's the, there's the problem of the continued blackmail

PRESIDENT: Right.

DEAN: which will not only go on now, it'll go on when these people are in prison, and it will compound the obstruction of justice situation. It'll cost money. It's dangerous. Nobody, nothing — people around here are not pros at this sort of thing. This is the sort of thing Mafia people can do: washing money, getting clean money, and things like that, uh — we're — We just don't know about those things, because we're not used to, you know — we are not criminals and not used to dealing in that business. It's, uh, it's, uh —

PRESIDENT: That's right.

DEAN: It's a tough thing to know how to do.

PRESIDENT: Maybe we can't even do that.

DEAN: That's right. It's a real problem as to whether we could even do it. Plus there's a real problem in raising money. Uh, Mitchell has been working on raising some

money. Uh, feeling he's got, you know, he's got one, he's one of the ones with the most to lose. Uh, but there's no denying the fact that the White House, and uh, Ehrlichman, Haldeman, Dean are involved in some of the early money decisions.

PRESIDENT: How much money do you need?

DEAN: I would say these people are going to cost, uh, a million dollars over the next, uh, two years.

PRESIDENT: We could get that.

DEAN: Uh huh.

PRESIDENT: You, on the money, if you need the money, I mean, uh, you could get the money. Let's say —

DEAN: Well, I think that we're going —

PRESIDENT: What I meant is, you could, you could get a million dollars. And you could get it in cash. I, I know where it could be gotten.

DEAN: Uh hunh.—

PRESIDENT: Yeah. well, what do you need, then? You need, uh, you don't need a million right away, but you need a million. Is that right?

DEAN: That's right.

PRESIDENT: You need a million in cash, don't you? If you want to put that through, would you put that through, uh — this is thinking out loud here for a moment — would you put that through the Cuban Committee?

DEAN: Um, no.

PRESIDENT: Or would you just do this through a — (Unintelligible) that it's going to be, uh, well, it's cash money, and so forth. How, if that ever comes out, are you going to handle it? Is the Cuban Committee an obstruction of justice, if they want to help?

DEAN: Well, they've got a pr—, they've got priests, and they —

PRESIDENT: Would you like to put, I mean, would that, would that give a little bit of a cover, for example?

DEAN: That would give some for the Cubans and possibly Hunt.

PRESIDENT: Yeah.

DEAN: Uh, then you've got Liddy, and McCord is not, not accepting any money. So, he's, he is not a bought man right now.

PRESIDENT: Okay.

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DEAN: All right. Let, let me, uh,

PRESIDENT: Go ahead.

DEAN: continue a little bit here now. The, uh, I, when I say this is a, a growing cancer, uh, I say it for reasons. like

this. Bud Krogh, in his testimony before the Grand Jury, was forced to perjure himself. Uh, he is haunted by it. Uh, Bud said, "I haven't had a pleasant day on the job."

PRESIDENT: Huh? Said what?

DEAN: He said, "I have not had a pleasant day on my job." Uh, he talked, apparently, he said to me, "I told my wife all about this," he said. "The, uh, the curtain may ring down one of these days, and, uh, I may have to face the music, which I'm perfectly willing to do." Uh—

PRESIDENT: What did he perjure himself on, John?

DEAN: His, did, uh, did he know the Cubans? He did. Uh —

PRESIDENT: He said he didn't?

DEAN: That's right. They didn't press him hard, or that he —

PRESIDENT: He might be able to — I am just trying to think. Perjury is an awful hard rap to prove. He could say that I — Well, go ahead.

DEAN: (Coughs) Well, so that's, that's the first, that's one perjury. Now, Mitchell and, and, uh, Magruder are potential perjuries. There is always the possibility of any one of these individuals blowing. Hunt. Liddy. Liddy is in jail right now; he's serving his — trying to get good time right now. I think Liddy is probably, in his, in his own bizarre way, the strongest of all of them. Uh, so there's, there is that possibility.

PRESIDENT: Well, your, your major, your major guy to keep under control is Hunt.

DEAN: That's right.

PRESIDENT: I think. Because he knows

DEAN: He knows so much.

PRESIDENT: about a lot of other things.

DEAN: He knows so much. Right. Uh, he could sink Chuck Colson. Apparently, apparently he is quite distressed with Colson. He thinks Colson has abandoned him. Uh, Colson was to meet with him when he was out there, after, now he had left the White House. He met with him through his lawyer. Hunt raised the question; he wanted money. Colson's lawyer told him that Colson wasn't doing anything with money, and Hunt took offense with that immediately, that, uh, uh, that Colson had abandoned him. Uh —

PRESIDENT: Don't you, just looking at the immediate problem, don't you have to have — handle Hunt's financial situation

DEAN: I, I think that's,

PRESIDENT: damn soon?

DEAN: That is, uh, I talked to Mitchell about that last night,

PRESIDENT: Mitchell.

DEAN: and, and, uh, I told —

PRESIDENT: Might as well. May have the rule you've got to keep the cap on the bottle that much,

DEAN: That's right; that's right.

PRESIDENT: in order to have any options.

DEAN: That's right.

PRESIDENT: Either that or let it all blow right now. —

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DEAN: That's what really troubles me. For example, what happens if it starts breaking, and they do find a criminal case against a Haldeman, a Dean, a Mitchell, an Ehrlichman? Uh, that is —

PRESIDENT: Well if it really comes down to that, we cannot, maybe — We'd have to shed it in order to contain it again.

DEAN: (Clears throat) That's right. I'm coming down to the, what I really think is that, that, Bob and John and John Mitchell and I should sit down and spend a day or however long, to figure out (1) how this can be carved away from you, so it does not damage you or the Presidency. 'Cause it just can't. And it's not something, it, you're not involved in it and it's something you shouldn't —

PRESIDENT: That is true.

DEAN: I know, sir, it is. Well I can just tell from our conversations that, you know, these are things that you have no knowledge of.

PRESIDENT: The absurdity of the whole damned thing,

DEAN: But it —

PRESIDENT: bugging and so on. Well, let me say I am keenly aware of the fact that, uh, Colson, et al., and so forth, were doing their best to get information and so forth and so on. But they all knew very well they were supposed to comply with the law.

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DEAN: One way to do it is for you to in—, tell the Attorney General that you finally, you know, really, this is the first time you are getting all the pieces together. Uh —

PRESIDENT: Ask for another grand jury?

DEAN: Ask for another grand jury. The way it should be done though, is a way that — for example, I think that we could avoid, uh, criminal liability for countless people and the ones that did get it, it could be minimal.

PRESIDENT: Tell me — Talking about your obstruction

of justice role, I don't see it. I can't see it. You re —

DEAN: Well, I've been a con—, I have been a conduit for information on, on taking care of people out there who are guilty of crimes.

PRESIDENT: Oh, you mean like the uh, oh— the blackmail.

DEAN: The blackmail. Right.

PRESIDENT: Well, I wonder if that part of it can't be — I wonder if that doesn't — let me put it frankly: I wonder if that doesn't have to be continued?

DEAN: (Clears throat)

PRESIDENT: Let me put it this way: let us suppose that you get, you, you get the million bucks, and you get the proper way to handle it, and you could hold that side.

DEAN: Uh huh.

PRESIDENT: It would seem to me that would be worthwhile.

DEAN: (Clears throat)

PRESIDENT: Now we have

DEAN: Well, that's, yeah that's —

PRESIDENT: one problem; you've got a problem here. You have the problem of Hunt and, uh, his, uh, his clemency.

DEAN: That's right. And you're going to have the clemency problem for the others. They all would expect to be out and that may put you in a position that's just

PRESIDENT: Right.

DEAN: untenable at some point. You know, the Watergate Hearings just over, Hunt now demanding clemency or he is going to blow. And politically, it'd be impossible for, you know, you to do it. You know, after everybody —

PRESIDENT: That's right.

DEAN: I am not sure that you will ever be able to deliver on the clemency. It may be just too hot.

PRESIDENT: You can't do it till after the '74 elections, that's for sure. But even then

DEAN: (Clears throat)

PRESIDENT: your point is that even then you couldn't do it.

DEAN: That's right. It may further involve you in a way you shouldn't be involved in this.

PRESIDENT: No it's wrong; that's for sure.

DEAN: Well, whatever — you know I — there've been some necessary judgments made. Uh —

PRESIDENT: Before the election.

DEAN: Before the election and, in a way, the necessary

ones, you know, before the election. There — you know, we've, this was

PRESIDENT: Yeah.

DEAN: — to me there was no way

PRESIDENT: Yeah.

DEAN: that, uh —

PRESIDENT: Yeah.

DEAN: But to burden this second Administration

PRESIDENT: We're all in on it.

DEAN: was something that — It's something that is not going to go away.

PRESIDENT: No it isn't.

DEAN: It is not going to go away, sir.

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PRESIDENT: But at the moment, don't you agree that you'd better get the Hunt thing? I mean, that's worth it, at the moment.

DEAN: That, that's worth buying time on, right.

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PRESIDENT: Suppose the worst — that Bob is indicted and Ehrlichman is indicted. And I must say, maybe we just better then try to tough it through. You get my point.

DEAN: That's right. That —

PRESIDENT: If, if, if, for example, our, uh, our — say, well, let's cut our losses and you say we're going to go down the road, see if we can cut our losses, and no more blackmail and all the rest, and the thing blows and they indict Bob and the rest. Jesus, you'd never recover from that, John.

DEAN: That's right.

PRESIDENT: It's better to fight it out instead. You see, that's the other thing, the other thing. It's better just to fight it out, and not let people testify, so forth and so on. Now, on the other hand, we realize that we have these weaknesses — that, uh, we, we've got this weakness in terms of blackmail.

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PRESIDENT: Now, with the second line of attack. You discussed this though I do want you to still consider my scheme of having, you brief the Cabinet, just in very general terms, and the leaders — very general terms — and maybe some, some very general statement with regard to my investigation. Answer questions, and to, and to basically on the question of what they told you, not what you know.

DEAN: Right.

PRESIDENT: Haldeman is not involved. Ehrlichman —

DEAN: Oh, I can — you know — if, if we go that route, sir, I can, I can give a show that, you know, there's, uh, we

can sell, you know, just about like we were selling Wheaties on our position. There's no —

PRESIDENT: The problem that you have are these, uh, mine fields down the road. I think the most difficult problem is the, are the, are the, are the guys that are going to jail. I think you're right about that. I agree. Now. And also the fact that we're not going to be able to give them clemency.

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(Haldeman enters the room)

PRESIDENT: I was talking to John about this, uh, this whole situation, and I think we, uh, so that we can get away from the bits and pieces that have broken out. He is right in having — in, in, uh, recommending that, that, uh, that there be a meeting at the very first possible time. Ehrlichman, and now Ehrlichman's gone on to California but, uh, is today, uh — is tomorrow Thursday?

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PRESIDENT: In other words he knows, John, uh, uh, knows about everything and also what all the, uh, what all the potential criminal liabilities are, you know, whether it's uh — what's it like that thing — what about, uh, obstruction —

DEAN: Obstruction of justice. Right.

PRESIDENT: So forth and so on. And, uh, the, uh — I think, I think that's — Then we've got to, uh, see what the line is. Whether the line is one of, uh, continuing to, uh, run a, try to run a total stonewall, and take the heat from that, uh, having in mind the fact that, uh, there are vulnerable points there; the vulnerable points being, that, well, the first vulnerable points would be obvious: In other words, it would be if, uh, uh, one of the, uh, defendants, particularly Hunt, of course, who is the most vulnerable in my opinion, might, uh, blow the whistle, and he, he — and his price is pretty high, but at least, uh, we should, we should buy the time on that, uh, as I, as I pointed out to John.

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DEAN: And just say that, uh,

PRESIDENT: It was a national security — and I was not in a position to divulge it. Well, anyway, let's don't go beyond that. We're — forget — but I do think now we, uh, I mean, there is, there is a time, now, when you don't want to talk to Mitchell. He doesn't want to talk, and the rest. But John is right. There must be a, must be a four way talk here of the particular ones that we can trust here. Uh, we've got to get a decision on it. It's not something that — you see you got two ways, basically. There are really only two ways you could go. You either decide the whole God damned thing is so full of problems with potential criminal liability which is

what concerns me. I don't give a damn about the publicity. We could, we could rock that through, if we had to let the whole thing hang out. It would be a lousy story for a month. But I can take it. But the point is, I don't want any criminal liability. That's the thing that I am concerned about for members of the White House staff, and I would trust for members of the Committee. And that means, Magruder. —

PRESIDENT: I think Hunt knows a hell of a lot more.

DEAN: Yeah, I do too...

HALDEMAN: You think he does? I am afraid you're right, but, uh, we don't know that.

PRESIDENT: I don't think — (laughs) I think we better assume it....

DEAN: And he's playing hard ball, and he wouldn't play hard —

HALDEMAN: Is he?

DEAN: Yeah. He wouldn't play hard ball unless he were pretty confident that he could cause an awful lot of grief.

HALDEMAN: Really?

DEAN: Yeah.

PRESIDENT: He is playing hard boiled ball with regard to Ehrlichman, for example, and that sort of thing. He knows what he's got.

HALDEMAN: What's he planning on, money?

DEAN: Yeah, money and —

HALDEMAN: Really?

DEAN: Oh, yeah. He's uh —

PRESIDENT: It's a hundred and twenty hundred dollars. It's about what, about how much, which is easy. I mean, it's not easy to deliver, but it is easy to get. Uh, now, uh (nine seconds of silence). If that, if what, if that, if that is the case, if it's just that way, then the thing to do is, if, if, the thing all, uh cracks out — if, if for, if, for example, you say look we're not, we're not going to continue to try to — let's state it frankly, cut our losses — that's just one way you could go — on the assumption that we're, we, by continuing to cut our losses, we're not going to win. That in the end, we are going to be bled to death, and it's all going to come out anyway, and then you get the worst of both worlds. We are going to lose, and people are going to —

HALDEMAN: And look (unintelligible)

PRESIDENT: And we're going to look like we covered up. So that we can't do. Now. The other, the other, uh, the other line, however, uh, if you, if you take that line, that we are not going to continue to cut our losses, that means then we have to look square in the eye as to what the hell those

losses are, and see which people can — so we can avoid criminal liability. Right?

DEAN: That's right.

PRESIDENT: And that means, we got to, we've got to keep it off of you, uh, which I, which I (unintelligible) obstruction of justice thing. We've got to keep it off Ehrlichman. We've got to keep it, naturally, off of Bob, off Chapin, if possible, and Strachan. Right?

DEAN: Uh huh.

PRESIDENT: And Mitchell. Right?

DEAN: Uh huh.

PRESIDENT: Now.

HALDEMAN: And Magruder, if you can. But that's the one you pretty much have to give up.

PRESIDENT: But, but Magruder, Magruder, uh, uh, John's, Dean's point is that if Magruder goes down, he'll pull everybody with him.

HALDEMAN: That's my view.

PRESIDENT: Is it?

HALDEMAN: Yup. I think Jeb, I don't think he wants to. And I think he even would try not to, but I don't think he is able not to.

DEAN: I don't think he is strong enough, when it really —

HALDEMAN: Well, not that, not that —

PRESIDENT: Well, another way, another way to do it then, Bob, is to — and John realizes this — is to, uh, continue to try to cut our losses. Now we have to look at that course of action. First, it is going to require approximately a million dollars to take care of the jackasses that are in jail. That could be, that could be arranged.

HALDEMAN or DEAN: Yeah.

PRESIDENT: That could be arranged. But you realize that after we are going, I mean, assuming these (unintelligible) are gone, they're going to crack, you know what I mean? And that'll be a unseemly story. Eventually, all the people aren't going to care that much.

DEAN: That's right. It's —

PRESIDENT: People aren't going to care.

DEAN: So much history will pass between then and now.

PRESIDENT: In other words, what we're talking about is no question. But the second thing is, we're going going to be able to deliver on, on any kind of a, of a clemency thing. You know Colson has gone around on this clemency thing with Hunt and the rest.

PRESIDENT: Coming back, though, to this. So you got

that — the, uh, hanging over. Now. If, uh — you, you see, if you let it hang there, the point is you could let all or only part — The point is, your feeling is that we just can't continue to, to pay the blackmail of these guys?

DEAN: I think that's our greatest jeopardy.

HALDEMAN: Yeah.

PRESIDENT: Now, let me tell you, it's

DEAN: 'Cause that is—

PRESIDENT: no problem, we could, we could get the money. There is no problem in that. We can't provide the clemency. The money can be provided. Mitchell could provide the way to deliver it. That could be done. See what I mean?

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PRESIDENT: But let's now come back to the money, a million dollars, and so forth and so on. Let me say that I think you could get that in cash, and I know money is hard, but, there are ways. That could be (unintelligible). But the point is, uh, what would you do on that — Let's, let's look at the hard facts.

DEAN: I mean, that's been very interesting. That has been, thus far, the most difficult problem.

PRESIDENT: Why?

DEAN: They have been — That's why these fellows have been on or off the reservation all the way along.

PRESIDENT: So the hard place is this. Your, your feeling at the present time is the hell with the million dollars. In other words, you say to these fellows, "I am sorry, it is all off," and let them talk. Right?

DEAN: Well—

PRESIDENT: That, that's the way to do it, isn't it?

DEAN: That —

PRESIDENT: If you want to do it clean, (unintelligible)

DEAN: Then what—

PRESIDENT: come out.

HALDEMAN: See, then when you do it, it's a way you can live with. Because the problem with the blackmail, and that's the thing we kept raising with you when you said there's a money problem, when we need twenty thousand or a hundred thousand or something, was yeah, that's what you need today. But what do you need tomorrow and next year and five years from now?

PRESIDENT: How long?

DEAN: Well, that was just to get us through November seventh, though.

HALDEMAN: I recognize that's what we had to give

DEAN: Right.

HALDEMAN: to November seventh. There's no question.

DEAN: Except they could have sold — these fellows could have sold out to the Democrats for a fantastic amount.

PRESIDENT: Yeah, these fellows — But of course you know, these fellows though, as far as that plan was concerned.

HALDEMAN: But what is there?

PRESIDENT: As far as what happened up to this time, our cover there is just going to be the Cuban Committee did this for them up through the election.

DEAN: Well, yeah. We can put that together. That isn't, of course, quite the way it happened, but, uh —

PRESIDENT: I know, but it's the way it's going to have to happen.

DEAN: It's going to have to happen. (Laughs.)

PRESIDENT: That's right. Finally, though, so you let it go. So what happens is then they go out and, uh, and they'll start blowing the whistle on everybody else. Isn't that what it really gets down to?

DEAN: Uh huh.

PRESIDENT: So that, that would be the, the clean way. Right?

DEAN: Uh —

PRESIDENT: Is that really your — you, you really go so far as to recommend that?

DEAN: That—No, I wouldn't. I don't think, I don't think necessarily that's the cleanest way. One of the — I think that's what we all need to discuss: is there some way that we can get our story before a grand jury, and, so that they can have, have really investigated the White House on this. I mean, and I must, I must be perfectly honest, I haven't really thought through that alternative. We've been, you know, been so busy

PRESIDENT: John,

DEAN: on the other containment situation.

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DEAN: But also when these people go back before the Grand Jury here, they are going to pull all these criminal defendants back in before the Grand Jury and immunize them.

PRESIDENT: And immunize them? Why? Who? Are you going to — On what?

DEAN: Uh, the U.S. Attorney's office will.

PRESIDENT: To do what?

DEAN: To talk about anything further they want to talk about.

PRESIDENT: Yeah. What do they gain out of it?

DEAN: Nothing.

PRESIDENT: To hell with them.

DEAN: They, they're going to stonewall it, uh, as it now stands. Except for Hunt. That's why, that's the leverage in his threat.

HALDEMAN: This is Hunt's opportunity.

DEAN: This is Hunt's opportunity.

PRESIDENT: That's why, that's why,

HALDEMAN: God, if he can lay this—

PRESIDENT: that's why your, for your immediate thing you've got no choice with Hunt but the hundred and twenty or whatever it is. Right?

DEAN: That's right.

PRESIDENT: Would you agree that that's a buy time thing, you better damn well get that done, but fast?

DEAN: I think he ought to be given some signal, anyway, to, to—

PRESIDENT: Yes.

DEAN: Yeah—You know.

PRESIDENT: Well for Christ's sakes get it in a, in a way that, uh — Who's going to talk to him?

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PRESIDENT: The, uh, the Grand Jury thing has a feel. Question is uh, — It, it at least says that we are cooperating

DEAN: Well—

PRESIDENT: with the Grand Jury.

DEAN: Once we, once we start down any route that involves the criminal justice system,

PRESIDENT: Yeah.

DEAN: You, you've got to have full appreciation of there is really no control over that.

PRESIDENT: No, sir.

DEAN: Uh, while we did, uh — we had a, an amazing job of

PRESIDENT: Yeah, I know.

DEAN: keeping the thing on the track before

PRESIDENT: Straight.

DEAN: while the FBI was out there, all that — and that was, uh, only because

PRESIDENT: Right.

DEAN: I had a (unintelligible) of where they were going.

PRESIDENT: (Unintelligible). Right. Right. But you haven't got that now because everybody else is going to have a lawyer. Let's take the new Grand Jury. Uh, the new Grand Jury would call Magruder again, wouldn't it?

DEAN: But, based on what information it would? For

example, what happens if Dean goes in and gives a story, you know, that here is the way it all came about. It was supposed to be a legitimate operation and it obviously got off the track. I heard of these horrors, told Haldeman that we shouldn't be involved in it.

PRESIDENT: Yeah. Right.

DEAN: Then Magruder's going to have to be called in and questioned about all those meetings again, and the like. And it begins to — again he'll begin to change his story as to what he told the Grand Jury the last time.

PRESIDENT: Well—

DEAN: That way, he's in a perjury situation.

HALDEMAN: Except, that's the best leverage you've got on Jeb — is that he's got to keep his story straight or he's in real trouble.

PRESIDENT: But you see, the Grand Jury proceeding (unintelligible) sort of thing, you can go down that road and then — if — if they had — I'm just thinking of now how the President looks. We would be cooperating. We would be cooperating through a Grand Jury. Everybody would be behind us. That's the proper way to do this. It should be done through a Grand Jury, not up there in the kleig lights of the Committee, or —

DEAN: That's right.

PRESIDENT: Nobody's questioning if it's a grand jury, and so forth. So, and then we would insist on executive privilege before the Committee, flat out say, "No we won't do that. We're not going to do it. Matter before a grand jury," and that's that. You see —

HALDEMAN: All right, then you go to the next step. Would we then — the Grand Ju—, the Grand Jury meet in executive session?

DEAN: Yes, sir, they're

PRESIDENT: Always —

DEAN: secret sessions, they're secret.

HALDEMAN: Secret session —

PRESIDENT: Secret —

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HALDEMAN: Well, what I was, I was going the other way there. I was going to — it might be to our interest to get it out.

PRESIDENT: Well, we, we could easily do that. Leak out certain stuff. We could pretty much control that. We've got much more control there. Now, the other possibility is not to go to the Grand Jury. Then you've got three things. (1) You just say, "The hell with it, we can't raise the money,

sorry Hunt, you can say what you want." And so Hunt blows the whistle. Right?

DEAN: Right.

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PRESIDENT: All right, if that happens, then that raises some possibilities of other criminal — because he is likely to say a hell of a lot of things and he's certain to get Magruder on it.

DEAN: It'll get Magruder. It'll start the whole FBI investigation going again.

PRESIDENT: Yeah. So, uh, what else — it'll get Magruder; it could possibly get Colson. He's in that danger.

DEAN: That's right. Could get, uh —

PRESIDENT: Could get Mitchell. Maybe. No.

HALDEMAN: Hunt can't get Mitchell.

DEAN: I don't think Hunt can get Mitchell. Hunt's got a lot of hearsay.

PRESIDENT: Ehrlichman? He could on the other thing — except Ehrlichman (unintelligible).

DEAN: Krogh, Krogh could go down in smoke. Uh —

PRESIDENT: Because Krogh, uh — Where could anybody — But on the other hand, Krogh just says he, uh, uh, Krogh says this is a national security matter. Is that what he says? Yeah, he said that.

DEAN: Yeah, but that won't sell, ultimately, in a criminal situation. It may be mitigating on sentences but it won't, uh, in the main matter —

HALDEMAN: Well, then that —

PRESIDENT: That's right. Try to look around the track. We have no choice on Hunt but to try to keep him —

DEAN: Right now, we have no choice.

PRESIDENT: But, but my point is, do you ever have any choice on Hunt? That's the point.

DEAN: (Sighs)

PRESIDENT: No matter what we do here now, John,

DEAN: Well, if we —

PRESIDENT: Hunt eventually, if he isn't going to get commuted and so forth, he's going to blow the whistle.

DEAN: What I have been trying to conceive of is how we could lay out everything we know (sighs) in a way that, you know, we've told the Grand Jury or somebody else, so that if a Hunt blows,

PRESIDENT: Yeah.

DEAN: so what's new? You know, it's already been told to a grand jury, and they found no criminal liability, and they investigated it in full. We're sorry fellow —

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PRESIDENT: But here is the point, John: So you go that — let's go to the other extreme, the other, the other angle is to decide, oh, well, if you open up the Grand Jury, first, it won't do any good; it won't be believed. And then you'll have two things going: the Grand Jury and you have the other thing. At least the Grand Jury appeals to me from the standpoint, it's the President makes the move. "Since all these charges have been bandied about, and so forth, the best thing to do is to — I have ordered, or I have asked the Grand Jury to look into any further charges. All charges have been raised." That's the place to do it, and not before a committee of the Congress. Right?

DEAN: Uh huh.

PRESIDENT: Then, however, we may say, Mitchell, et al., God, we can't risk that, I mean, uh, all sorts of shit 'll break loose there. Then that leaves you to your third thing. The third thing is just to continue to —

DEAN: Hunker down and fight it.

PRESIDENT: All right. If you hunker down and fight it, fight it and what happens?

DEAN: Your —

PRESIDENT: Your view is that that is, is not really a viable option.

DEAN: It's a very — it's a high risk. A very high risk.

PRESIDENT: A high risk, because your view is that what will happen out of that is that it's going to come out. Somebody's — Hunt — something's going to break loose —

DEAN: Something is going to break and —

PRESIDENT: When it breaks it'll look like the President

DEAN: — is covering up —

PRESIDENT: is, has covered up a huge uh, uh, this — Right?

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PRESIDENT: "I want you to get — we want you to (1) — " We'd say to Petersen, "We want you to get to the bottom of the God damned thing. Call another Grand Jury or anything else." Correct?

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PRESIDENT: All right. Fine. And, uh, my point is that, uh, we can, uh, — you may well come — I think it is good, frankly, to consider these various options. And then, once you, once you decide on the plan — John — and you had the right plan, let me say, I have no doubts about the right plan before the election. And you handled it just right. You contained it. Now after the election we've got to have another plan, because we can't have, for four years, we can't have this thing — you're going to be eaten away. We can't do it.

DEAN: Well, there's been a change in the mood —

HALDEMAN: John's point is exactly right, that the erosion here now is going to you, and that is the thing that we've got to turn off, at whatever the cost. We've got to figure out where to turn it off at the lowest cost we can, but at whatever cost it takes.

DEAN: That's what, that's what we have to do.

PRESIDENT: Well, the erosion is inevitably going to come here, apart from anything, you know, people saying that, uh, well, the Watergate isn't a major concern. It isn't. But it would, but it will be. It's bound to be.

DEAN: We cannot let you be tarnished by that situation.

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68. On March 21, 1973 at 12:30 p.m. H.R. Haldeman spoke by telephone to John Mitchell, who was in New York City. In addition to reflecting the 12:30 p.m. call, Haldeman's telephone log for that day also shows a conversation with John Mitchell's office at 4:06 p.m. with a marginal notation "car-9:30 a.m. (word illegible) Nat'l — Amer 520." Haldeman has testified that he does not recall asking Mitchell on March 21 whether Mitchell was going to take care of Hunt's demand for money.

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69. On the afternoon of March 21, 1973 Dean met with Haldeman and Ehrlichman. Ehrlichman and Dean have testified that the participants at the meeting speculated about John Mitchell's role in the Watergate affair, and wondered whether Mitchell's not coming forward was the cause of the beating everyone was taking on the subject of Watergate. Dean and Haldeman have testified that in the late afternoon of March 21, just before their second meeting with the President on that day, Dean told Haldeman that perhaps the solution to the whole thing was to draw the wagons around the White House. According to Haldeman, Dean also said that they should let all the chips fall where they may, because that would not hurt anybody at the White House since no one there had a problem.

70. On the afternoon of March 21, 1973 from 5:20 to 6:01 p.m. the President met with Haldeman, Ehrlichman and Dean. The following is an index to certain of the subjects discussed in the course of the March 21, 1973 afternoon meeting:

- Possibility of testimony before a new Grand Jury or before an independent panel established to investigate facts
- Possibility of pardon or clemency for Hunt
- What was being done about Hunt's demand
- Existence of persons with knowledge

- Written report by Dean on which President at some later time could be shown to have relied
- Ellsberg search and seizure may be sufficient for mistrial
- Possibility of Magruder, Chapin, Dean and Haldeman going to jail
- Possibility of Mitchell stepping forward and making some kind of disclosure.

Transcript of March 21, 1973 Meeting from 5:20-6:01 p.m., Prepared by the Impeachment Inquiry Staff

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EHRlichman: Well under this procedure of John's, uh, John's grand jury package was, uh, was, uh, uh, to give immunity, you know, to various witnesses who go before the Grand Jury. I, I think we have to figure that that is out of the picture. I just don't think that it, that it can be carried off.

HALDEMAN: Well, either the Grand Jury or you can try by setting up a special panel, 'cause you —

DEAN: The special panel could investigate and report back on the whole thing. Have them (unintelligible) immunize witnesses so that all the information can be obtained, and, uh

PRESIDENT: Maybe the appointment of a Presidential panel?

DEAN: I would think it would be too — well that would take special legislation to get immunity powers, whereas

PRESIDENT: Yeah.

DEAN: the Department of Justice right now possesses the, the ability to grant immunity.

PRESIDENT: Well, let's take the Grand Jury without immunity, what about that?

DEAN: Well —

PRESIDENT: That was your idea of getting out of it.

EHRlichman: Yeah. Well, I think that, uh, uh, is still a possibility. It leads to some very drastic results. Counsel over here reads the statutes, and, uh, there are awful opportunities for indictment, and, uh — So, uh,

PRESIDENT: But, doesn't uh, does anybody, uh, really think, really think that really we should do nothing? That's the other, I mean, that's, that's the option, period. If, uh — keep fighting it out on this ground if it takes all summer.

HALDEMAN: Which it will.

PRESIDENT: That's the other thing, whether we're going to, say, to contain the thing.

EHRlichman: Well, we've talked about that. We talked about, uh, possible opportunities in the Senate; that, that

may turn up that we don't foresee now. In other words, that you go in and start playing for the odds. Keep trying to put out fires here and there. The problem of the Hunt thing and, and, uh, possibly McCord and some of these other people breaking is there's no, uh, there is, there's no, uh, sign off on that ever. It just goes on and on and on.

PRESIDENT: That's right. Well if that's the case then, uh, what is your view as to what we should do now about Hunt, and so forth?

EHRlichman: Well, my, my view is that, that, uh, Hunt's interests lie in getting a pardon if he can. That ought to be, somehow or another, one of the options that he is most particularly concerned about. In, his, his indirect contacts with John don't contemplate that at all. Well, maybe they, maybe they contemplate it, but they say there's going (unintelligible)

PRESIDENT: I know.

HALDEMAN: That's right.

EHRlichman: They think that that's already understood.

PRESIDENT: Yeah.

EHRlichman: Uh —

PRESIDENT: I mean he's got to get that by Christmas time.

DEAN: That's right. But, uh —

EHRlichman: And if he doesn't, obviously, uh, he's got to figure it gets crosswise.

PRESIDENT: If that blows.

EHRlichman: If that blows and, and that's, it seems to me, that the, uh — although at least — It obviously is understood, that he has really gone over the ground with his attorney that's in there.

PRESIDENT: However, can he, by talking, uh, get pardoned? Get, get clemency from the court?

DEAN: That's one of the options he's obviously looking at now. He comes in and tells this judge before sentencing, "Your Honor" — and the judge is likely to call him in before sentencing — and says, "Your Honor, I am willing to tell all. Uh, I don't want to go to jail. I have pleaded guilty to an offense. I'll take that plea. I don't want to go to jail. I'll cooperate with you and the government in any way possible. I'll tell you everything I know." I think the judge probably, uh, uh, would look upon that very favorably, it would pay somebody to tell him.

EHRlichman: Yeah.

PRESIDENT: So then, now — so the point we have to, the bridge you have to cut, uh, cross there is, uh, which

you've got to cross, I understand, quite soon, is whether, uh, we, uh, what you do about, uh, his present demand. Now, what, what, uh, what (unintelligible) about that?

DEAN: Well, apparently Mitchell and, and, uh, uh,

UNIDENTIFIED: LaRue.

DEAN: LaRue are now aware of it, so they know what he is feeling.

DEAN: Well, * * * * * my thought is that if it's going to come it should come in a way that would not harm you and, uh, the individuals bear a part of it.

PRESIDENT: Well, we don't want to harm the people either. That's my concern. Well — survives them. Well, we can't, we can't harm the, uh, these young people I mean I'm damned concerned about all these people that were all working in

DEAN: For my part —

PRESIDENT: whatever they considered to be the best interests of the country, and so forth. I've never, I haven't any question as to —

HALDEMAN: That's right, we don't have any question here of some guy stashing money in his pocket.

(Several Voices.) — (Unintelligible)

PRESIDENT: (Unintelligible) it isn't something, it isn't it isn't something like Hiss, for example, God damned treason. Something (unintelligible)

HALDEMAN: Or like Sherman Adams, doing it for his own comfort, or uh, Albert Fall, doing it for his own enrichment.

PRESIDENT: Yeah. That's right. That's the point. That's why I say I'm, I'm going to take a lot of the heat. (Coughs) Well, we have to realize that, uh, the attrition is going to be rather considerable. That, that's your point, isn't it?

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DEAN: All right, is that, is that better? Or is it better to have, you know, just, just keep going and have the thing build up and all of a sudden collapse? And, and people get indicted, and people, uh, get tarnished.

PRESIDENT: After we've stonewalled it?

DEAN: After we've stonewalled it, and after the President's been accused of covering up that way.

PRESIDENT: That's the point.

EHRlichman: Or is there another way?

PRESIDENT: Yeah, like — ?

EHRlichman: Like the, the Dean statements, where the President then makes a full disclosure of everything

which he then has. And is in a position if it does collapse at a later time to say, "Jesus, I had the FBI, and the Grand Jury, and I had my own counsel. I turned over every rock I could find. And I rested my confidence in these people in good faith and it's obvious now —"

PRESIDENT: The middle ground taken would be — I mean, I've been around, we've been around on that one quite a bit, the middle ground would be that, uh, I mean, uh, naturally you, you having to live through it, have to be a bit sensitive about the way we're going to, we're — but I — That doesn't concern me. I mean it doesn't concern me, and I don't — I think as far as the public is concerned, it won't do much. Uh, if you as the White House Counsel, John, uh, on direction — uh, I ask for a, a written report, which I think, uh, that — which is very general, understand. Understand, (laughs) I don't want to get all that God damned specific. I'm thinking now in far more general terms, having in mind the fact that the problem with a specific report is that, uh, this proves this one and that one that one, and you just prove something that you didn't do at all. But if you make it rather general in terms of my — your investigation indicates that this man did not do it, this man did not do it, this man did do that. You are going to have to say that, John, you know, like the, uh, Segretti-Chapin —

DEAN: Um huh.

PRESIDENT: That has to be said. And, uh, and, so forth. And that under the circumstances, that, uh, grinds the man.

EHRlichman: Could he do this? To give some weight to that, could you attach as an appendix a list of the FBI reports to which you had access: interview with Kalmbach, interview with Segretti, interview with Chapin, and Magruder, and whoever, Dean, the whole business. So that the President at some later time is in a position to say, "I relied."

DEAN: Not on Dean alone but on corroborated evidence (unintelligible)

EHRlichman: That's right. It also helps with the Gray situation because it shows the use made of the FBI reports by you. He's reporting to the President. He can say in there, "I have not disclosed the contents of these to anybody else."

PRESIDENT: "Yes, I was, had access to reports for the purpose of carrying out your instructions to find out whether —" Because that is true. I've had — You're the man I have asked "Well, now, who the hell has been involved here." You reported it before, found that there was no

reflection on anybody (unintelligible) at this point. Uh, but, uh —

PRESIDENT: Your point, John, is the, the — You really think you've got to clean the cancer out now, right?

DEAN: Yes sir.

PRESIDENT: And, uh, how would you do that? You come back again for another round. You see no other, you see no other way that, uh, you, you, you — without the, without setting a, without breaking down on executive privilege, of course.

DEAN: I see that, yeah, yeah, there are a couple of ways to do it.

PRESIDENT: You certainly don't want to do it at the Senate, though, do you?

DEAN: No sir.

PRESIDENT: All right:

DEAN: I think that would be an added trap.

PRESIDENT: That's the, that's the worst thing. All right.

DEAN: Uh —

PRESIDENT: We've got to do it.

DEAN: We've got to do it. You have to do it, to get the credit for it. Uh, that, that gets you above it. Uh, as I see it, that means people getting hurt, and I hope we can find the answer to that problem.

EHRlichman: All right, suppose we did this? Supposing you rendered a report to the President on everything you know about this. And the President then fires some people. Step one. Step two, sends the report over to the Justice Department, then says, "I've been diligently at work on this. My counsel's been diligently at work. Here are his findings."

PRESIDENT: Where would you stop it? With, uh, Magruder over in Commerce?

EHRlichman: Christ, I don't know where it stops. You know, uh —

UNIDENTIFIED: (Unintelligible) Ziegler?

EHRlichman: Christ, that's —

HALDEMAN: It's probably going to be with Magruder

PRESIDENT: No.

HALDEMAN: (unintelligible) send it over to Justice.

EHRlichman: Well, if you send the report over, it just says Magruder did this and this.

PRESIDENT: Well, yeah, but —

EHRlichman: Well, that's what he's, that's what he is talking about.

DEAN: That's right.

PRESIDENT: And then Magruder, though, is a, is a fellow that's a —

EHRlichMAN: a free agent, at this point.

PRESIDENT: is a free agent, according to John, who'd say, uh — he'd pull others down with him.

EHRlichMAN: Sure.

DEAN: Well, now, what you, what you do—

HALDEMAN: You don't know that he would, but you sure as hell have got to assume he would.

EHRlichMAN: Why, of course.

DEAN: I think what you could do is you could drop numbers, with names on them, in a hat, you can draw them out to see who gets hurt and who doesn't. (Laughs) Well, that's about as fair as you could be.

EHRlichMAN: The minute you —

PRESIDENT: Strachan. Do the same to him with it.

DEAN: Strachan?

PRESIDENT: Maybe. Not so much.

EHRlichMAN: Well, if you go your route, you can't draw the line someplace —

DEAN: No, no.

EHRlichMAN: You can't then say, you know, we're going to, we're going to reserve that, we've got to let it all —

PRESIDENT: You see, if you go your route of the ca—, of getting, cutting, cutting the cancer out, the question is would you cut it out now is, uh, is, is, is, uh — Take a Hunt.

DEAN: Well —

PRESIDENT: You (unintelligible) — knock the hell out of him, don't you?

DEAN: That's right.

HALDEMAN: Well, if you take your route and it goes slightly (unintelligible) you have a certainty, almost, of Magruder going to jail, Chapin going to jail, you going to jail,

PRESIDENT: No.

HALDEMAN: Probably me going to jail.

PRESIDENT: Uh, again, I question the last two.

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DEAN: Let's say, let's say the President sent me to the Grand Jury to make a report. Who would be, who would, who could I actually do anything to, or cause any problems for? As a practical matter, first-hand knowledge, uh, almost no one. All I could do is to give them a focus plus leads.

PRESIDENT: Right. Right.

HALDEMAN: Then they start following the leads.

DEAN: That's right, and where they ultimately come down or — Well, there, there again, is, is, is the — We don't

have anybody to talk to somebody who understands the process (unintelligible). I was talking outside with Bob about Henry Petersen. Uh, we just have to have somebody talk to somebody that, that, can really break in and can say, "Henry, what does this mean in the criminal justice system? What kind of a case could be made on this? Uh, what kind of offenses would evolve out of that?" (Unintelligible) got a pretty good idea of most of the statutes that are involved, but there, uh, there is so much behind the statutes.

PRESIDENT: Do you want to bring him in? Talk to him? Well, if you do that, you will suit the Attorney General.

DEAN: Well, you're putting in, you're putting in his knowledge —

PRESIDENT: I see.

DEAN: Uh, we'll have to play with that.

HALDEMAN: If you do it hypothetically —

DEAN: Right.

HALDEMAN: You've got, you've got this brother-in-law who has this problem in school. (Laughs)

PRESIDENT: Yeah.

DEAN: He told this wild scenario that I'd like you —

PRESIDENT: Yeah

HALDEMAN: (Unintelligible). My friend is writing a play, and unless he, uh —

DEAN: Uh, but, it bothers me to do anything further now, in the situation, when Hunt's our real hang-up.

PRESIDENT: Well, now, do you think a statement prompts him?

DEAN: Yes, sir, I do. It doesn't solve it. It's just one more step.

HALDEMAN: The payment to Hunt does too.

PRESIDENT: The payment to Hunt does, yeah.

DEAN: Maybe that's what — That's why I say, you know, somebody to assess the criminal liability. Maybe we are misassessing it.

EHRlichman: Well, I really don't know, will Petersen —? Would you confide in him?

HALDEMAN: I think I would.

EHRlichman: How else? You could start down that road. You could say, "Henry, I want to, I want to talk to you about, uh, questions that arise in the course of my investigation, but I have to swear you to secrecy." If he'll take it on that basis.

DEAN: There's the answer, of course, "The President has told me never to say — I, uh, I want to know if you can talk to me off the record." (Unintelligible)

EHRlichman: You immediately eliminate one of your options. You can, well, you can eliminate the option of the President being able to take the position he knew nothing about it.

PRESIDENT: Uh, so you, uh, you see then that, uh, you don't see the, uh, you don't see the statement thing, uh, uh, helping insofar as the, the — be of any way — the, uh — helping insofar as — 'cause if — you, you must — you think that over some more.

DEAN: Yes, sir. The idea is the temporary answer.

PRESIDENT: I agree with that. But the point is to, uh, but you see, here's the, the way I would see the statement that we could say we get out: Our — Everything we would intend to say or, or we could get out a general statement as I have already indicated, would get out a, with regard to the fact that we spent looking into the God damn thing, it's really — I mean, I've said it, we, we just can't, you, you know, withdraw, so let's forget a withdrawal at this point. Well, and secondly, again, the offer for White House people to cooperate so that we're not covering up, okay. And that still leaves it, however, in the hands of the (Senate) Committee. I agree. A statement, at least, would, it's true, temporary, but it, uh, would indicate the President has looked into the matter, has had his counsel report to him and this is the result of that, uh, now let the Committee do their damndest. We will cooperate. And the Committee will say, "No." And so we'll just stand right there.

DEAN: Sirica may — put, you know, give them provisional sentences. And say if they are helpful to the government, back before the Grand Jury, he'll reconsider the sentences, (unintelligible) people horrendous sentences.

PRESIDENT: Suppose — Horrendous sentences I think we can anticipate. But, but, suppose he does that? Then where, where does that leave us then, John? Where does that leave us? You just say—

EHRlichman: Well, I don't think that's a surprise to the defendants. I think their counsel must have prepared them for that.

PRESIDENT: I'm — right. I wonder, however, however, in terms of what about our, what about our position? In other words, we're damned by the courts before Ervin ever could get there.

EHRlichman: The, the only thing that we can say is for Ziegler to say, "Look, we've investigated backwards and forwards in the White House, and we're satisfied on the basis of the report we have that nobody in the White House

has been involved in a burglary, nobody had notice of it, knowledge of it, participated in the planning, or aided or abetted it in any way."

PRESIDENT: Well, that's what you could say.

EHRlichman: And it happens to be true,

PRESIDENT: Yeah.

EHRlichman: as for that transaction.

PRESIDENT: (Laughs) Sure. As for that transaction.

EHRlichman: Right.

PRESIDENT: Well, John, you, uh, you, uh, you must feel that's, uh, is enough.

DEAN: No. (unintelligible)

EHRlichman: Now, let's, let's try another, let's try another concomitant to that. Supposing Mitchell were to step out on the same day and were to say, "I've been doing some investigation at 1701 and I find so and so, and so and so."

PRESIDENT: (Unintelligible)

UNIDENTIFIED: Yes, sir.

EHRlichman: And I don't know what he would say, but maybe he'd want to make some kind of a disclosure. And then what?

PRESIDENT: What the hell is he going to disclose that isn't going to blow something? Yeah. Well (unintelligible)

EHRlichman: Well, I'm going to have to — I (unintelligible) have to resolve it.

PRESIDENT: I don't have any time. I'm sorry. I'm going to have to leave. What is there — What have you got here (unintelligible). Well, uh, you meet what time tomorrow?

HALDEMAN: I am not sure. In the morning.

DEAN: Morning.

HALDEMAN: (Unintelligible) we will brood this out.

PRESIDENT: Fine. Well, sure. You come here (unintelligible). We're going around. That's the way you have to do. Right.

71. On the evening of March 21, 1973 Fred LaRue caused approximately \$75,000 in cash to be delivered to William Bittman, attorney for E. Howard Hunt. Earlier that day LaRue had called Mitchell when Dean refused to authorize the payment to Hunt, and Mitchell had approved the payment to Hunt.

72. On April 17, 1973 the President issued the following public statement:

"On March 21, as a result of serious charges which came to my attention, some of which were publicly reported, I began intensive new inquiries into this whole matter."

In his address to the nation of April 30, 1973 the President stated that in March 1973 he received new information regarding the involvement of members of the White House staff in the Watergate affair, and that:

"As a result, on March 21, I personally assumed the responsibility for coordinating intensive new inquiries into the matter, and I personally ordered those conducting the investigations to get all the facts and to report them directly to me, right here in this office."

73. On the evening of March 21, 1973 the President dictated his recollections of the events that had occurred on that day.

***Transcript of Dictabelt Recording of the President's
Recollections of March 21, 1973 Prepared by the
Impeachment Inquiry Staff***

PRESIDENT: As far as the day was concerned it was relatively uneventful except for the, uh, talk with Dean. Dean, really in effect let it all hang out when he said there was a cancerous growth around the President that simply was going to continue to grow and that we had probably to cut it out now rather than let it grow and destroy us later. He obviously is very depressed and doesn't really see anything — other course of action open, but to, uh, move to let the, uh, facts out. Paragraph.

As I examined him, it, uh, seems that he feels even he would be guilty of some, uh, criminal pra—, uh liability, due to the fact that he, uh, participated in the actions, which, uh, resulted in taking care of the defendants, while they were, uh, under trial. Uh, as he pointed out, uh, what is causing him concern is that every one of the various participants is now getting his own counsel and that this is going to cause considerable problems, because it will be each man for himself, and, uh, one will not be afraid to rat on the other. As a matter of fact, uh, Haldeman backed him up in this respect, when, uh, he mentioned the fact that, uh, even Magruder would, uh, bring Haldeman down if he would, uh, if he felt that he himself was to go down. Haldeman said he agreed. Uh, the Haldeman selection on Magruder is still a very hard one for me to figure out. He was, he's made very few mistakes, but this is one case where Rose was right. He picked a rather weak man, who had all the appearance of character, but who really lacks it when the, uh, chips are down. It seemed to me in my talk with Dean that the idea of a Grand Jury had, uh, much to, uh, be said for it. Yet after

he, Haldeman and Ehrlichman had met they came back and said they'd been around the track and felt that that would be a mistake. Ehrlichman did not feel, for example, that a Grand Jury or some sort of special panel which Dean thought could be set up, uh, would be able to grant immunity. Uh, the Grand Jury appealed to me because, uh, it seemed to me this would be much better to have the White House, uh, people appear before a Grand Jury with some rules of evidence than to, uh, be forced, uh, eventually to appear before a Committee of the Congress, where there would be none. Of course, the other option is for them not to appear at all, but this puts the buck right back on the President, as Dean pointed out, and leaves, uh, not only the aura of cover-up but also the, uh, very great danger that somebody like H — Hunt is going to blow. Paragraph.

Hunt seems to be a real problem according to, uh, Dean. What really concerned him was that somebody approached him, Hunt's lawyer, at some party and said that Hunt needed a hundred and — thousand dollars or so to pay his lawyer and handle other things or he was going to have some things to say that would be very detrimental to Colson and Ehrlichman, et al. This is, uh, Dean recognizes as pure blackmail. Of course, Hunt's in a pretty bad position on this because it would expose him to another charge, but I suppose that what he might figure is that if he, uh, turns state's evidence he could, uh, go free himself. Paragraph.

I feel for all of the people involved here, because they were all, as I pointed out to them in the meeting in the EOB this afternoon, involved for the very best of motives. Uh, I don't think that, uh, certainly Haldeman or Ehrlichman had any idea about bugging, I, I and of course Dean didn't. He in fact pointed out that when, uh, Liddy had first presented this scheme it was so wild that Mitchell sat puffing his pipe rather chuck — or rather, uh, chuckling all the while, that Dean had then pointed out, uh, later to Ehrlichman that, uh, to, uh, Mitchell that they had to get off of this kick right away. Uh, then came the, uh, real cruncher: Apparently what had happened is that Colson, with Liddy and Hunt in his office, called Magruder and told him in February to get off his ass and start doing something about, uh, setting up some kind of operation. Uh, this involvement by Colson, of course, is, uh, uh, was perhaps the very best intention and it may be that he is telling the literal truth, when he says he doesn't know what they were going to do in terms of bugging, etcetera. Yet, uh, Colson was always pushing terribly hard for action, and in this instance, uh, pushed so hard that, uh, Liddy et al, following their natural inclinations, uh, went, the extra step

which got them into serious trouble. Period. Paragraph.

I learned for the first time that, uh, Ehrlichman apparently had sent Hunt and his crew out to check into Ellsberg, uh, to see something about his, uh, check something about his, uh, uh, psychiatric problem with his doctor, or something like that. That seemed to me to be a very curious junket for, uh, Ehrlichman to be involved in. Ehrlichman says that, uh, he was three or four steps away from it, but apparently Krogh has a problem here because Krogh did answer one question to the effect that he did not know the Cubans, which, of course, puts him in a straight position of perjury. This of course would be a terrible tragedy because Krogh, uh, was involved in national security work at the time, had nothing whatever to do with Watergate and the whole Ellsberg business, uh, was something was undertaken solely for the purpose of, uh, attempting to get information which would be helpful in, uh, working up some of the Government's case, uh, on the, uh, Pentagon papers. It seems that Strachan has been a real, uh, courageous fellow through all this. He apparently certainly had knowledge of the information of the matter, and, uh, according to uh, uh, uh, Dean, uh, Strachan apparently transferred the \$300,000 or so that Haldeman had — that was left to Haldeman after the 1969 campaign — '68 campaign — had transferred it back to the committee. Uh, I don't think that this is the problem that Dean seems to think it is, but of course he's — has to warn against every loose end that might come out, particularly in view of some of the things that have come out up to this point. They are going to meet with Mitchell in the morning, and I, uh, hope that Mitchell will really put his mind to this thing and perhaps out of it all can come so — some sort of a course of action we can follow. Uh, it seems to me just to hunker down without making any kind of a statement is really, uh, too dangerous as far as the President — (57 second silence) I got over to the house quite late.

74. On the morning of March 22, 1973 at 11:00 a.m. H.R. Haldeman, John Ehrlichman, John Mitchell and John Dean met in Haldeman's office. Haldeman, Ehrlichman and Dean have testified that at this time Mitchell indicated that E. Howard Hunt was not a "problem any longer." Mitchell has denied making such a statement. At this meeting, according to Ehrlichman and Haldeman, Mitchell stated that the Administration's rigid executive privilege policy was untenable, both from a legal and from a political standpoint, because it appeared to the public to be a cover-up on the part of the President. Haldeman testified that most of the discussion at the meeting concerned approaches to dealing with the

situation, rather than a review of the facts.

75. On or about March 22, 1973, John Ehrlichman met with Egil Krogh at the White House. Ehrlichman assured Krogh that Howard Hunt was stable or more stable, that his recommendation was just to hang tough, and that Hunt was not going to disclose all.

BOOK IV: INVESTIGATION OR COVER-UP?

The following Statements of Information and related evidence are taken from Book IV of the House Judiciary Committee publications. Book IV, composed of three volumes, deals with the period from March 22 to April 30, 1973, when the President conducted a further investigation into Watergate or allegedly planned a new cover-up. Book IV relates most specifically to Sections 1, 2, 3, 7 and 8 of The First Article of Impeachment.

1. On March 22, 1973 from 1:57 to 3:43 p.m. there was a meeting among the President, John Mitchell, H.R. Haldeman, John Ehrlichman and John Dean. The following is an index to certain of the subjects discussed in the course of that meeting:

- Nature and purpose of a written report on Watergate-related matters to be drafted by John Dean.
- White House contacts with the Senate Select Committee, and discussion of the activities of that Committee.
- White House position on doctrine of executive privilege, and possible changes in that position.
- White House relationship to future Grand Jury investigations.
- Reference to White House approach to disclosure as "modified limited hang out" and other discussion relating to disclosure.

Transcript of March 22, 1973 Meeting, Prepared by the Impeachment Inquiry Staff

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PRESIDENT: I think you need a — that's right. Why don't you do this? Why don't you go up to Camp David? And, uh —

DEAN: I might do that; I might do that. A place to get away from the phone.

PRESIDENT: Completely away from the phone and so forth. Just go up there and, uh (unintelligible) I don't know

what king work this is, but I agree that that's what you could — see what you come up with. You would have in mind and assume that we've got some sort of a document (unintelligible) and then the next step once you have written it you will have to continue to defend (unintelligible) action.

PRESIDENT: you could write it in a way that you say this report does not re—, it's not, not, will not comment upon and so forth and so forth, but, "I — as, as you directed, Mr. President, and without at all compromising the rights of defendants and so forth, some of which are on appeal, here are the facts with regard to members of the White House staff, et cetera, et cetera, et cetera, which you asked from me. I have checked the FBI records; I have read the Grand Jury testimony and this is it — these are my conclusions, chit, chit, chit, chit."

* * * * *

PRESIDENT: You think, you think we want to, want to go this route now? And the — Let it hang out, so to speak?

DEAN: Well, it, it isn't really that —

HALDEMAN: It's a limited hang out.

DEAN: It's a limited hang out.

EHRlichman: It's a modified limited hangout.

PRESIDENT: Well, it's only the questions of the thing hanging out publicly or privately.

DEAN: What it's doing, Mr. President, is getting you up above and away from it. And that's the most important thing.

PRESIDENT: Oh, I know. But I suggested that the other day and we all came down on, uh, remember we came down on, uh, on the negative on it. Now what's changed our mind?

DEAN: The lack of alternatives or a body.

(Laughter)

* * * * *

MITCHELL: Believe me, it's a lot of work.

PRESIDENT: Oh, great, I may (unintelligible). Well, let me tell you, you've done a hell of a job here.

UNIDENTIFIED: (unintelligible)

PRESIDENT: I didn't mean for you. I thought we had a boy here. No, you, uh, John, uh, carried a very, very heavy load. Uh, both Johns as a matter of fact, but, uh, I was going to say, uh, uh, John Dean is, uh (unintelligible) got — put the fires out, almost got the damn thing nailed down till past the election and so forth. We all know what it is. Embarrassing God damn thing the way it went, and so forth. But, in my view, uh, some of it will come out; we will survive it. That's the way it is. That's the way you've got to look at it.

DEAN: We were within a few miles months ago, but, uh, we're —

PRESIDENT: The point is, get the God damn thing over with.

PRESIDENT: You know, uh, the, oh, you, you can say when I (unintelligible) I was going to say that the, oh — (Picks up phone) can you get me Prime Minister Trudeau in Canada, please. (Hangs up) I was going to say that Dean has really been, oh, something on this.

MITCHELL: That he has, Mr. President, no question about it, he's a very —

PRESIDENT: Son-of-a-bitching tough thing.

MITCHELL: You've got a very solid guy that's handled some tough things. And, I also want to say these lawyers that you have think very highly of him. I know that John spends his time with certain ones —

PRESIDENT: Dean? Discipline is very high.

MITCHELL: Parkinson, O'Brien.

PRESIDENT: Yes, Dean says it's great. Well, you know I feel for all the people, you know, I mean everybody that's involved. Hell, is all we're doing is their best to (unintelligible) and so forth. (Unintelligible). That's, that's why I can't let you go, go down. John? It's all right. Come in.

* * * * *

PRESIDENT: Then he can go over there as soon (unintelligible) this. But, oh, the, oh, the one thing I don't want to do is to — Now let me make this clear. I, I, I thought it was, oh, very, oh, very cruel thing as it turned out — although at the time I had to tell (unintelligible) — what happened to Adams. I don't want it to happen with Watergate — the Watergate matter. I think he made a, made a mistake, but he shouldn't have been sacked, he shouldn't have been — And, oh, for that reason, I am perfectly willing to — I don't give a shit what happens. I want you all to stonewall it, let them plead the Fifth Amendment, cover-up or anything else, if it'll save it — save the plan. That's the whole point. On the other hand, uh, uh, I would prefer, as I said to you, that you do it the other way. And I would particularly prefer to do it that other way if it's going to come out that way anyway. And that my view, that, oh, with the number of jackass people that they've got that they can call, they're going to — The story they get out through leaks, charges, and so forth, and innuendos, will be a hell of a lot worse than the story they're going to get out by just letting it out there.

MITCHELL: Well —

PRESIDENT: I don't know. But that's, oh, you know, up to this point, the whole theory has been containment, as you know, John.

MITCHELL: Yeah.

PRESIDENT: And now, we're shifting. As far as I'm concerned, actually from a personal standpoint, if you weren't making a personal sacrifice — it's unfair — Haldeman and Dean. That's what Eisenhower — that's all he cared about. He only cared about — Christ, "Be sure he was clean." Both in the fund thing and the Adams thing. But I don't look at it that way. And I just — That's the thing I am really concerned with. We're going to protect our people, if we can.

MITCHELL: Well, the important thing is to get you up above it for this first operation. And then to see where the chips fall and, oh, and, oh, get through this Grand Jury thing up here. Oh, then the Committee is another question. (Telephone rings) What we ought to have is a reading as to what is (telephone rings) coming out of this Committee and we, if we handle the cards as it progresses. (Telephone rings)

PRESIDENT: Yeah, But anyway, we'll go on. And, oh, I think in order — it'll probably turn just as well, getting them in the position of, even though it hurts for a little while.

MITCHELL: Yeah.

PRESIDENT: You know what I mean. People say, "Well, the President's (unintelligible)," and so forth. Nothing is lasting. You know people get so disturbed about (unintelligible). Now, when we do move (unintelligible) we can move, in an, in a, in a, in the proper way.

MITCHELL: If you can do it in a controlled way it would help and good, but, but, but the other thing you have to remember is that this stuff is going to come out of that Committee, whether —

PRESIDENT: That's right.

MITCHELL: And it's going to come out no matter what.

PRESIDENT: As if, as if I, and then it looks like I tried to keep it from coming out.

MITCHELL: That's why it's important that that statement go up to the Committee.

PRESIDENT: (Picks up phone) Hello. I don't want to talk. Sure. (hangs up) Christ. Sure, we'll

2. On March 22, 1973, during the meeting specified in the preceding paragraph, the President telephoned Attorney General Kleindienst and spoke to him from 2:19 to 2:26 p.m. According to the White House log of meetings and conversations between the President and the Attorney General, except for the President's cabinet meeting on March 9, the last previous meeting or conversation between the President and Attorney General Kleindienst occurred on March 1, 1973. The President directed Kleindienst to be the Administration's contact with Senator Howard Baker in connection with the

hearings to be conducted by the Senate Select Committee. He asked Kleindienst to give Senator Baker "guidance," to be "our Baker handholder," to "babysit him, starting in like, like ten minutes."

3. On the morning of March 23, 1973 Judge John Sirica read in open court a letter that James McCord had written on March 19, 1973. The letter alleged in part that political pressure to plead guilty and remain silent had been applied to the defendants in the Watergate trial; that perjury had occurred during the trial; and that others involved in the Watergate operation were not identified when they could have been by those testifying. At this time, Judge Sirica deferred final sentencing of all defendants except Gordon Liddy. Judge Sirica stated that in imposing sentence he would weigh as a factor the defendants' cooperation with the ongoing Watergate investigations.

4. On the morning of March 23, 1973 members of the press attempted to question John Dean regarding Patrick Gray's testimony at his confirmation hearings on the previous day that Dean "probably lied" when he told FBI agents on June 22, 1972 that he did not know whether Howard Hunt had a White House office. Later in the morning of March 23 Dean was informed by Paul O'Brien, an attorney for CRP, that a letter from James McCord to Judge Sirica had been read in open court. Dean has testified that he then telephoned Ehrlichman to inform him of McCord's letter and that Ehrlichman stated he had already received a copy. In the early afternoon of March 23 the President telephoned Dean from Key Biscayne. Dean has testified that the President told him, "Well, John, you were right in your prediction." Dean has testified that the President suggested that Dean and his wife go to Camp David and get some relaxation, and that Dean analyze the situation and report back to him.

5. On March 23, 1973 the President telephoned Patrick Gray at 1:11 p.m. According to the President's logs the last time the President had spoken to Gray was on February 16, 1973. Gray has testified that he cannot remember the President's precise words, but that the call was a "buck up call" in which the President told Gray that he knew the beating Gray had taken at his confirmation hearing; that it was very unfair; and that there would be another day to get back at their enemies. Gray has testified that he remembered distinctly that the President said to him, "You will remember, Pat, I told you to conduct a thorough and aggressive investigation." Gray also has testified that from March 21 on he received no order from the President or anyone implementing a Presidential directive to get all the facts with respect to the Watergate

matter and report them directly to the President.

6. On March 23, 1973 the President met with H. R. Haldeman in Key Biscayne, Florida from 1:25 to 1:45 p.m. and from 2:00 to 6:30 p.m. Haldeman has testified about the McCord letter and its contents, and that the President asked Haldeman to call Charles Colson to ask if Colson had ever offered Howard Hunt clemency or had any conversation with Hunt about clemency. Haldeman telephoned Colson some time before 2:15 p.m. on March 23 and asked what commitment Colson had made to Howard Hunt with respect to the commutation of his sentence. Colson reported to Haldeman on this matter. Immediately after this conversation Colson dictated a memorandum of the conversation for the file. Colson's memorandum states, in part, that he told Haldeman that he made no representations nor used any one else's name in the conversation; that he had only told Hunt's lawyer that as long as he was around he would do anything he could to help Hunt. Colson's memorandum states that Haldeman asked what would happen if Hunt "blew" and that Colson replied that "it would be very bad" and that Hunt "would say things that would be very damaging." Colson's memorandum states that Haldeman replied, "then we can't let that happen."

8. On the afternoon of March 23, 1973 Dean and his wife went to Camp David, Maryland. The White House compilation of meetings and conversations between the President and John Dean indicate that the President spoke by telephone with Dean at Camp David from 3:28 to 3:44 p.m. Dean has testified that after the operator said that the President was calling Haldeman came on the line and said that while Dean was at Camp David he should spend some time writing a report on everything he knew about Watergate. Dean has testified that when he asked whether the report was for internal or public use Haldeman said that would be decided later. Haldeman has testified that Dean had been told to write a report prior to the time he left for Camp David.

9. Between March 23 and March 28, 1973 John Dean stayed at Camp David and attempted to prepare a report on matters relating to the break-in at the DNC headquarters and the investigation of the break-in. A draft of portions of a report was prepared by Dean, and partially typed. It related certain events before and after the Watergate break-in. The draft report made no reference to Dean's meetings with the President or to any statements or actions by the President. Dean has testified that during his stay at Camp David he decided that he would have to think of some way for the President to get out in front of the matter and that, during a

telephone conversation with Haldeman, he discussed the creation of an independent Warren-type commission. On March 28, 1973 Haldeman called Dean and requested that he return to Washington to meet with Mitchell and Magruder.

10. On March 26, 1973 the *Los Angeles Times* reported that James McCord had told investigators for the Senate Select Committee that both John Dean and Jeb Magruder had prior knowledge of the break-in at the DNC headquarters. On this same morning, H.R. Haldeman, who was with the President in Key Biscayne, Florida called Dean at Camp David. They discussed Dean's recollection of facts relating to the authorization of the Liddy plan. Haldeman has testified that he asked Dean if he would have any problems if the President announced that day that he was requesting that Dean go to the grand jury without immunity; Dean replied that he would have no problem with appearing before the grand jury, but that his testimony concerning the number and purpose of the meetings among Dean, John Mitchell, Gordon Liddy and Magruder would conflict with the testimony previously given by Magruder; Dean stated that there were other areas of concern, such as payments to the defendants by Kalmbach, the \$350,000, the Hunt threat, and Colson's talk about helping Hunt. Following his telephone call with Dean, Haldeman met with the President. Haldeman has testified that the President decided to drop his plan to announce that Dean would be requesting an appearance immediately before the grand jury. Haldeman has testified that the problem was that Dean had not really sorted out the facts at that point and it was not appropriate for him to go to the grand jury.

14. On March 27, 1973 Jeb Magruder met with John Mitchell in New York City and discussed the potential of Magruder's being brought before the grand jury on a perjury count. Magruder has testified that he received from Mitchell assurances respecting continued salary and that they discussed executive clemency. Mitchell has testified that with respect to support, he told Magruder that he "was a very outstanding young man and I liked and I worked with and to the extent that I could help him in any conceivable way, I would be delighted to do so." Mitchell has testified that he did not make any promises of executive clemency. During the conversation, Magruder asked for a meeting with Haldeman.

15. On March 27, 1973 the President met from 11:10 a.m. to 1:30 p.m. with John Ehrlichman and from 11:35 a.m. to 1:35 p.m. with H.R. Haldeman. Ehrlichman has testified that at this meeting the President directed him to contact Attorney General Kleindienst. The President has stated that on March

27, 1973 he directed that Kleindienst be told to report directly to the President anything he found in the Watergate area. The President has produced an edited transcript of this conversation.

16. On March 28, 1973 Mitchell and Haldeman met with Magruder in Haldeman's office. They discussed Magruder's false testimony regarding the approval of the Liddy Plan. Haldeman telephoned Dean and requested that he return from Camp David to meet with Mitchell and Magruder. Dean has testified that on his return he went directly to Haldeman's office; that Haldeman told him that Mitchell and Magruder were waiting in another office to discuss with Dean his knowledge of the January and February 1972 meetings in Mitchell's office; that Dean said he would not lie about those meetings; and that Haldeman said he did not want to get into it but Dean should work it out with Mitchell and Magruder. Dean met with Mitchell and Magruder. Following the meeting, both Mitchell and Dean reported to Haldeman that there was a problem as to what the facts were regarding the 1972 meetings.

17. On March 28, 1973 John Ehrlichman telephoned Attorney General Kleindienst on the President's instructions and asked Kleindienst a series of questions which the President had dictated and which Ehrlichman had hand written on a piece of paper. Ehrlichman, during the conversation, told Kleindienst that the President directed him to tell the Attorney General that the best information he had or has is that neither Dean, Haldeman, Colson nor Ehrlichman nor anybody in the White House had any prior knowledge of the Watergate burglary and that the President was counting on the Attorney General to provide him with any information to the contrary and to contact him direct. Ehrlichman also told the Attorney General that serious questions were being raised with regard to John Mitchell and the President wanted the Attorney General to communicate to him any evidence or inferences on that subject.

18. On August 22, 1973 the President publicly stated that on the 29th of March he directed Ehrlichman to continue the investigation that Dean was unable to conclude.

20. On August 15, 1973 the President stated that when he learned on March 30, 1973 that Dean had been unable to complete his report he instructed Ehrlichman to conduct an independent inquiry and to bring all the facts to him. On March 30 the President met with John Ehrlichman and Ronald Ziegler from 12:02 to 12:18 p.m. According to the White House edited transcript of this meeting, the only subject discussed was a draft statement to be issued by Ziegler at a

press briefing. Ehrlichman has testified that at the noon meeting the President directed him to conduct an inquiry into the Watergate matter. Ehrlichman has testified that the President said he was satisfied John Dean was in this Watergate activity so deeply that he simply could not any longer have anything to do with it; that the President needed to know about executive privilege and the attorney-client privilege; that the President needed someone to set strategy with regard to testifying at the Committee and the grand jury and other places; and that the President needed the truth about the Watergate matter.

26. On April 4, 1973 Dean told Haldeman that his lawyers had met privately with the prosecutors.

27. On April 5, 1973, L. Patrick Gray called the President and requested that his nomination as permanent Director of the FBI be withdrawn. According to Gray, the President told him that this was a bitter thing to have happened to Gray and there would be a place for Gray in the Nixon administration. The President informed Gray that he wanted him to serve as Acting FBI Director until a successor was confirmed. In a public statement issued by the President on April 5, 1973, announcing the withdrawal of Gray's name, the President praised Gray and stated that his compliance with Dean's completely proper and necessary request for FBI reports exposed Gray to totally unfair innuendo and suspicion.

30. On April 8, 1973 Dean started to meet with the prosecutors. While meeting with the prosecutors, Dean received a call from Air Force One from Haldeman's assistant Lawrence Higby, who asked Dean to be in Ehrlichman's office that afternoon for a meeting. Ehrlichman and Haldeman met with Dean from 5:00 until 7:00 p. m. There was a discussion of the possibility of a grand jury appearance by Dean. Ehrlichman has testified that they discussed, among other things, what this "hang up" was between Mitchell and Dean and Dean's feeling that Mitchell did not want Dean to talk to the prosecutors or appear before the grand jury. Ehrlichman has also testified that the President decided on the flight that he wanted Dean to go to the grand jury, and that Ehrlichman and Haldeman conveyed that to Dean at the meeting.

31. On April 8, 1973, from 7:33 to 7:37 p. m., the President and John Ehrlichman spoke by telephone. The President has produced an edited transcript of that conversation. A summary has been prepared of that transcript.

***Judiciary Committee Staff Summary of White House
Edited Transcript of April 8, 1973 Telephone
Conversation***

Ehrlichman reported to the President that Dean would appear before the grand jury and his testimony would harm Magruder, but not Mitchell. The President said that Mitchell should decide whether to tell Dean to say nothing or lie. The President said, "Well, John is not going to lie." The President expressed his opinion that if Dean incriminated Magruder, Mitchell should be concerned that Magruder would incriminate Mitchell and not Haldeman. The President also said the grand jury would be concerned with who gave final approval. The President concluded by telling Ehrlichman that Magruder had better plead the 5th Amendment and we don't want Mitchell popping off.

35. On April 13, 1973, the day Magruder began meeting with the prosecutors, Lawrence Higby, staff assistant to Haldeman, had two telephone conversations with Magruder which were taped without Magruder's knowledge. Higby asked Magruder whether his testimony was going to be damaging to Strachan and Haldeman. Magruder said it would damage Strachan but he had not talked to Haldeman about the Watergate until long after. Higby told Magruder that it wasn't in his long or short term interest to blame the White House. On April 14, 1973 Ehrlichman and Haldeman reported these conversations to the President. Ehrlichman told the President that Higby had handled Magruder so well that Magruder had closed all his doors now with this tape; that the tape would beat the socks off Magruder if he ever got off the reservation.

36. On April 14, 1973 the President met with Ehrlichman from 8:55 to 11:31 a.m. and with Haldeman from 9:00 to 11:30 a.m. At this meeting the President instructed Ehrlichman to meet with Mitchell. The President was advised that the grand jury was focusing on the Watergate aftermath. There was a discussion of payments to the Watergate defendants and of the transfer of \$350,000 from Strachan to LaRue to be used for payments to the defendants.

In response to the Judiciary Committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording.

***Judiciary Committee Staff Summary of White House
Edited Transcript, April 14, 1973, 8:55-11:31 a.m.
Meeting***

Haldeman said, "Dean says very flatly that Kalmbach did not know the purpose of the money and has no problem." The President said, "Dean did know the purpose? Hunt testifies — so basically then Hunt will testify that it was so-called hush money. Right?" Ehrlichman said he thought so. The President asked, "Where does that serve him, let me ask?" and was told by Ehrlichman it would serve him to have his sentence reduced. Haldeman said "he'd be served the same purpose by not saying it was hush money, by saying it (sic) gave it to these guys I had recruited for this job and I . . . was concerned about their family —." The President said, "That's right, that's what it ought to be and that's got to be the story that." At this point Haldeman said, "Unintelligible" and the President continued with, "Will be the defense of these people, right?"

The conversation then turned to contacting Mitchell to tell him, in Ehrlichman's words "the jig is up." The President said "now is the time to do something." The discussion covered several possible persons who might take the message to Mitchell. Ehrlichman then mentioned that he had been working on something when Dean called him at twelve-thirty. The President asked if he was working on "another subject." Ehrlichman said, "Oh, no" and Haldeman said, "There is no other subject!"

The President then said, "what is the — is the liability of Hunt — I am thinking of the payoff thing."

The President said, that Dean had told him a few weeks ago "about the problem of Hunt's lawyer" needing "sixty thousand or forty thousand dollars or something like that." The President said, "I said I don't know where you can get it. I said, I mean, I frankly felt he might try to get it but I didn't know where." The President said that Dean "left it up with Mitchell and Mitchell said it was taken care of ..." The President asked if Dean had talked to Ehrlichman "about that." Ehrlichman responded, "He talked to me about it. I said, John, I wouldn't have the vaguest notion where to get it." The President said, "Yeah." Ehrlichman said he saw Mitchell later in the day, and the President said, "(w)hat happened?" and Ehrlichman said, "And he just said, 'It's taken care of.'" Haldeman said that "Mitchell raised the problem to Dean and said, 'What have you done about that other problem?', and Dean said, . . . 'Well, you know, I

don't know.' And Mitchell said, 'Oh, I guess that's been taken care of.'" Haldeman said that it was apparently taken care of through LaRue," who told Dean, "this whole thing is ridiculous now," and "it's all out now and there is nothing we can do about it," and "you know I can't figure out how I got into this, to begin with, but it seems to me all of us have been drawn in here in trying to cover up for John."

The President asked "For Mitchell?" and Haldeman said, "Yeah, which is exactly what's happened." The President said, "LaRue said this?" Haldeman said, "Yes," and the President said, "He's right."

* * * * *

The President said that "Well this will be done because there is another reason too. It isn't like, Dean is not like Mitchell, now, let's face it." Haldeman agreed. The President said, "Dean is not like Mitchell in the sense that Dean only tried to do what he could to pick up the pieces and everybody else around here knew it had to be done." Ehrlichman said, "Certainly." The President said, "Let's face it. I'm not blaming anybody else —." Ehrlichman said, "No, I understand that. I have great trouble in (unintelligible) in the light of the known involvement that he had in the." The President said, "Aftermath?". Ehrlichman said, "Right, but —." Haldeman said, "But the known involvement he had in that was for what was understood here to be the proper system." The President said, "The question is motive. That's right." Ehrlichman said, "That number one. Number two, there is nothing new about that. As I have developed this thing. . . . There were 8 or 10 people around here who knew about this, knew it was going on. Bob knew, I knew, all kinds of of people knew." The President then said, "Well, I knew it. I knew it." Ehrlichman said, "And it was not a question of whether —," and the President said, "I must say though, I didn't know it but I must have assumed it though but you know, fortunately — I thank you both for arranging it that way and it does show the isolation of the President, and here it's not so bad — But the first time that I knew that they had to have the money was the time when Dean told me that they needed forty thousand dollars. I had been, frankly, (unintelligible) papers on those little envelopes. I didn't know about the envelopes (unintelligible) and all that stuff." Ehrlichman then said that if Dean was dismissed because he knew the operation was going on, you couldn't stop with him and you would have to "go through a whole place wholesale." The President then said, "Fire the whole staff," and Ehrlichman said, "That's right. It's a question of motive. It's a question of role and I don't think Dean's role in the after-

math, at least from the facts that I know now, achieves a level of wrongdoing that requires that you terminate him."

The President then said, "I think he made a very powerful point to me that of course, you can be pragmatic and say, (unintelligible) cut your losses and get rid of 'em. Give 'em an hors d'oeuvre and maybe they won't come back for the main course. Well, out, John Dean. On the other hand, it is true that others did know."

38. On April 14, 1973, at 1:30 p.m., Haldeman had a telephone conversation with Magruder and taped the conversation. Magruder told Haldeman that he had committed perjury many times; that he had now decided to follow his lawyer's advice and make a full disclosure to the grand jury; that his testimony would put Gordon in a spot; and that he intended to plead guilty.

39. On April 14, 1973, at the President's request, Ehrlichman met with Mitchell from 1:40 to 2:10 p.m. Ehrlichman told Mitchell that the President had instructed him to talk to Mitchell and say not to hold back on account of the Presidency. Mitchell said that he was going to stay where he was because he was too far out. Mitchell said that he got euchred into it by not paying attention and that the whole genesis of this thing was at the White House. Mitchell told Ehrlichman that Dean had been caught in the middle like so many others who were trying to keep the lid on until after the election and trying to keep the lid on all the other things that had gone on at the White House. Magruder's pending disclosures to the prosecutors were also discussed. Mitchell told Ehrlichman that some of the White House fund had been used to make payments to the defendants, with Haldeman's approval, prior to the return of the money to Fred LaRue.

Transcript of April 14, 1973 Meeting Prepared by the Impeachment Inquiry Staff

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EHRlichman: Because he — uh, a, a lot of validation has been made with regard to John Dean, for instance, and I have not been able to, uh, point out to the President any reliable evidence that John had any corrupt motive or participated in any such obstruction.

MITCHELL: Well, certainly there wasn't any corrupt motive.

EHRlichman: (Unintelligible)

MITCHELL: Poor John is the guy that just got caught in the middle

EHRlichMAN: Sure.

MITCHELL: of this thing.

EHRlichMAN: Sure, and that's what I said.

MITCHELL: Like, uh, like so many others that were first of all trying to keep the lid on it until after the election,

EHRlichMAN: Yeah.

MITCHELL: and, uh, in addition to that, to keep the lid on all the other things that, uh, were going on over here, uh, that

EHRlichMAN: Well, the, uh,

MITCHELL: would have even been worse, I think than the Watergate business.

EHRlichMAN: the, uh, uh, question that comes up whether these fellows would have talked to the press or not. It would, uh — the election would have been far worse than if they'd talked to the U.S. Attorney.

MITCHELL: Yeah.

EHRlichMAN: Yeah. So, I mean, we, we have a lot to talk about on that thing. But anyway, Silbert is going full bore on that, and, uh, uh, in, in some ways it's the least of our worries, but in other ways it, it does involve a, a lot of other players who were not involved in the, in the break-in thing.

MITCHELL: Of course it also involves the White House fund.

MITCHELL: Well, let me (clears throat) tell you where I stand. Uh, there is no way that I'm going to do anything except staying where I am because I'm too far, uh, far out. Uh, the fact of the matter is that, uh, I got euchred into this thing, when I say, by not paying attention to what these bastards were doing, and uh, well you know how far back this goes — this, uh, whole genesis of this thing was over here — as you're perfectly well aware.

EHRlichMAN: No, I didn't know that.

* * * * *

41. On April 14, 1973 the President met with Haldeman and Ehrlichman from 2:24 to 3:55 p.m. At this meeting Ehrlichman reported on his meeting with Mitchell. There was a discussion of the motive for the payments to the defendants and the transfer of the \$350,000 from the White House to the Committee for the Re-election of the President. The President instructed Ehrlichman to meet with Magruder. There was a discussion whether it would reduce the likelihood of Department of Justice follow-up if Ehrlichman gave a report to Kleindienst rather than Silbert.

In response to the Committee's subpoena for the tape recording and other evidence of this conversation, the Presi-

dent has produced an edited transcript of that recording.

43. On April 14, 1973 the President met with Haldeman and Ehrlichman from 5:15 to 6:45 p.m. Ehrlichman reported to the President on his meeting with Magruder and his attorneys. The President instructed Haldeman to give Strachan a report of Magruder's testimony. There was a discussion of the motive for the payments to the defendants.

In response to the Committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording.

44. On April 14, 1973, at approximately 6:00 p.m. and during the meeting specified in the preceding paragraph, Ehrlichman telephoned Kleindienst. Ehrlichman told Kleindienst that he had been conducting an investigation for the President. There was a discussion of what Ehrlichman should do with the information he had uncovered. Kleindienst has testified that Ehrlichman told him that the testimony that Magruder had given to the U.S. Attorneys would implicate people high and low in the White House and in the campaign committee. The President has produced an edited transcript of this conversation. According to this transcript Ehrlichman stated that the information provided by Magruder implicated people up and down in the Committee to Re-elect; and, when Kleindienst asked who Magruder implicated besides himself and Mitchell, Ehrlichman answered Dean, LaRue, Mardian and Porter.

45. On April 14, 1973 the President had a telephone conversation with Haldeman from 11:02 to 11:16 p.m. There was a discussion of what would be said to Strachan about the information Magruder was giving to the prosecutors. There was also a discussion about the motive for making payments to the defendants.

In response to the Committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording. A summary of that transcript has been prepared.

46. On April 14, 1973, from 11:22 to 11:53 p.m., the President had a telephone conversation with John Ehrlichman. There was a discussion of what Ehrlichman would say to Colson and Strachan about his conversation with Magruder, and what Ehrlichman would say to Dean about a plan to deal with obstruction of justice allegations. There was also a discussion of whether Haldeman should be dismissed.

In response to the Committee's subpoena for the tape recording and other evidence of this conversation, the President has produced an edited transcript of that recording.

**Judiciary Committee Staff Summary on White House
Edited Transcript of April 14, 1973, Telephone
Conversation**

On April 14, 1973, the President and Ehrlichman had a telephone conversation from 11:22 to 11:53 p.m.

The President asked Ehrlichman if he shouldn't give Colson "at least a touch up ... or is that dangerous according to Kleindienst?" Ehrlichman answered that he didn't think he should say anything to Colson about John Dean, but that he could tell Colson that he understood Magruder had talked. The President said he thought they owed it to Colson, so he didn't "go in there and well frankly on a perjury rap." Ehrlichman said he didn't think "he is in any danger on that," and the President asked, "Why wouldn't he be in any danger, because he's got his story and knows pretty well what he is going to say?" Ehrlichman replied, "Yeah, I think he is pretty pat, but I will talk to him in the morning and give him a cautionary note anyway."

Ehrlichman told the President he had an urgent message to call Colson. The President said, the "urgent call may be just what we know, or it may be more of something on our friend" Hunt. The President said, "There isn't a damn thing you can do about that either."

Ehrlichman said he would probably see Kleindienst the next day, and the President told Ehrlichman to tell Kleindienst that the appointment of a Special Prosecutor "would be a terrible reflection on the system of justice" and that the "Administration would be in effect admitting that the Justice Department was so corrupt that it couldn't prosecute." The President said that "the Special Prosecutor thing can only open other avenues potentially. I don't mean that there is anything you want to cover up, but you know. He will just go through and —" Ehrlichman said, "I think it is folly."

The President said, "I just feel that I have to be in a position to be clean and to be forthcoming, etc."

47. During the evening of April 14, 1973 Petersen was briefed by the prosecutors on the information furnished by Dean and Magruder. Petersen telephoned Kleindienst and arranged to report to him immediately. On April 15, 1973 Kleindienst met at his home with Petersen, United States Attorney Titus, and chief prosecutor Silbert from approximately 1:00 a.m. to 5:00 a.m. Kleindienst was briefed on evidence implicating high White House and CRP officials in the Watergate break-in and the obstruction of the govern-

ment's investigation. Kleindienst decided to arrange a meeting with the President that morning.

48. On April 15, 1973 at 8:41 a.m. Kleindienst attempted to reach the President by telephone to request an immediate meeting. The President returned Kleindienst's call at 10:13 a.m. and agreed to meet Kleindienst that afternoon.

49. On April 15, 1973 John Ehrlichman met with Gordon Strachan from approximately 10:00 a.m. to 10:35 a.m. and 11:15 a.m. to noon. They discussed Strachan's recollection of his contacts with Magruder and Haldeman relating to Watergate. Ehrlichman has testified that he confronted Strachan with Magruder's allegation about sending Strachan a budget which included specific reference to bugging, and that Strachan said that he was sure he had never seen anything like that. Ehrlichman's notes of his meeting with Strachan reflect a reference to a memorandum from Strachan to Haldeman stating a sophisticated intelligence operation is going with a 300 budget.

50. On April 15, 1973 the President met with John Ehrlichman from 10:35 to 11:15 a.m. Ehrlichman reported that he was meeting with Strachan. There was a discussion of the motive for payments to the defendants and of what Dean's defense might be to obstruction of justice charges.

In response to the Committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

51. On April 15, 1973 the President met with Attorney General Kleindienst from 1:12 to 2:22 p.m. in the President's EOB office. Kleindienst reported to the President on the evidence against Mitchell, Dean, Haldeman, Ehrlichman, Magruder, Colson and the others. Kleindienst has testified that the President appeared dumbfounded and upset when Kleindienst told him about the Watergate involvement of Administration officials, and that the President did not state that he had previously been given this information by John Dean. The President asked about the evidence against Haldeman and Ehrlichman and made notes on Kleindienst's response. There was a discussion of the payments to the defendants and what motive had to be proved to establish criminal liability. There was discussion of the transfer of \$350,000 from the White House to LaRue. The President made a note: "What will LaRue say he got the 350 for?"

The Committee has subpoenaed the tape recording and other evidence of this conversation. The President has stated that the tape on the recorder for his EOB office ran out during his afternoon meeting with Kleindienst. The President

has produced an edited transcript of a recording of a portion of the conversation. A summary of that transcript has been prepared.

52. On April 15, 1973 from 2:24 to 3:30 p.m. the President met with Ehrlichman in the President's EOB office. From 3:27 to 3:44 p.m. the President spoke to Haldeman by telephone and discussed conflicts between the recollections of Magruder and Strachan concerning conversations about Watergate. At 3:48 p.m. the President returned a telephone call from Kleindienst and agreed to have Petersen join their upcoming meeting.

In response to the Committee's subpoena for the tape recording and other evidence of the President's meeting with Ehrlichman, his telephone conversation with Haldeman, and his telephone conversation with Kleindienst, the President has produced edited transcripts of the recordings of the Haldeman and Kleindienst telephone calls.

53. On April 15, 1973 Petersen and Kleindienst met with the President from 4:00 to 5:15 p.m. in the President's EOB office. Petersen has testified that he reported on the information that the prosecutors had received from Dean and Magruder and that his report included the following: that Mitchell had approved the \$300,000 budget for the Liddy "gemstone" operation; that budget information for "gemstone" and summaries of intercepted conversations were given to Strachan and that information given to Strachan was for delivery to Haldeman; that if the prosecutors could develop Strachan as a witness, "school was going to be out as far as Haldeman was concerned"; that Ehrlichman through Dean informed Liddy that Hunt should leave the country; and that Ehrlichman had told Dean to "deep six" certain information recovered by Dean from Hunt's office. Petersen has also testified that he recommended that Haldeman and Ehrlichman be dismissed, but Dean be retained while cooperating with the prosecutors. Petersen has testified that the President: exhibited a lack of shock and emotion; spoke well of Haldeman and Ehrlichman; suggested that Dean and Magruder were trying to exculpate themselves; suggested a cautionary approach to the granting of immunity; stated that he had first learned that there were more significant problems than he had anticipated on March 21, 1973, although he did not tell Petersen what Dean had told him on that date; stated that he had told Dean to write a report but that Dean had been unable to write a report; stated that he told Ehrlichman to conduct an investigation after Dean failed to deliver his report; stated that Haldeman and Ehrlichman had denied the charges against them; and requested that Petersen reduce to

writing what he had said to the President about Haldeman and Ehrlichman.

The Committee has subpoenaed the tape recording and other evidence regarding this conversation. The President has stated that the tape on the recorder for his EOB office ran out during his afternoon meeting with Kleindienst.

54. On April 15, 1973 the Watergate prosecutors interviewed John Dean. The prosecutors were informed that Gordon Liddy and E. Howard Hunt had participated in the break-in at the office of Daniel Ellsberg's psychiatrist. Dean stated that not all the material from Hunt's safe had been turned over to FBI agents after the Watergate break-in, but that certain materials from the safe were personally handed by Dean to Gray.

56. On April 15, 1973 from 9:17 to 10:12 p.m., the President met with John Dean in the President's EOB office. Dean has testified that he reported to the President that he had been to the prosecutors; that the President asked him about Haldeman's knowledge of the Liddy plans; that the President stated he had been joking when he said it would be easy to raise \$1 million to pay for maintaining the silence of the Watergate defendants; and that the President said in a nearly inaudible tone that he had been foolish to discuss Hunt's clemency with Colson. Dean also has testified that he told the President he had not discussed with the prosecutors his conversations with the President and that the President told him that he could not tell the prosecutors about national security matters or about any of the conversations between the President and Dean. Dean has testified that the nature of the President's questions led him to think that the President was taping the conversation. The President's notes of this meeting indicate that the President asked Dean what he had told Kalmbach about the purpose of the money and that Dean said he had briefed Haldeman and Ehrlichman every inch of the way. During this meeting the President telephoned Petersen from 9:39 to 9:41 p.m. and instructed Petersen to contact Liddy's attorney and tell him that the President wanted Liddy to tell everything he knows.

The President has stated that the tape on the recorder for his EOB office ran out on the afternoon of April 15, 1973. In response to the Committee's subpoena for the tape recording and other evidence of his telephone conversations with Petersen, the President has produced an edited transcript of that recording.

57. On April 15, 1973 from 10:16 to 11:15 p.m. the President met with H. R. Haldeman and John Ehrlichman in the President's EOB office. During this meeting Ehrlichman

at the President's request telephoned Patrick Gray and discussed the documents taken from Hunt's White House safe and given to Gray by Dean in June 1972. Shortly thereafter Ehrlichman telephoned Gray and had a second conversation regarding the contents of Hunt's safe. Ehrlichman told Gray that Dean had told the prosecutors that he had delivered two of Hunt's files to Gray. Gray told Ehrlichman that he had destroyed the documents.

59. On April 16, 1973 from 8:18 to 8:22 a.m. the President had a telephone conversation with John Ehrlichman. Ehrlichman has testified that the President stated he was going to ask Dean to resign or take a leave of absence because Dean apparently continued to have access to White House files and because the President and Dean then had basically an adversary relationship. From 9:50 to 9:59 a.m. the President met with Haldeman and Ehrlichman. There was a discussion of what the President would say to Dean and of what statement might be released to the press.

In response to the Committee's subpoena for the tape recording and other evidence of the conversation between the President, Haldeman and Ehrlichman, the President has produced an edited transcript of the recording.

60. On April 16, 1973 the President met with John Dean from 10:00 to 10:40 a.m. The following is an index to certain of the subjects discussed in the course of that meeting:

- President's request that Dean submit a letter of resignation or a request for a leave of absence, and discussion of other resignations.
- March 21, 1973 conversation among the President, Dean and Haldeman, and what Dean should say about that conversation.
- Whether the President would waive executive privilege.
- How events after the break-in and after March 21 would be described.
- What induced Magruder to talk and the President's desire to take credit for Magruder's cooperation.
- President's statements to Dean that Dean should tell the truth.
- Executive clemency.
- President's statement that Dean was still his counsel.
- What should be done about legal problems of White House aides.

*Transcript Prepared by the Impeachment Inquiry
Staff of a Recording of a Meeting Between the
President and John Dean on April 16, 1973,
from 10:00 to 10:40 a.m.*

* * * * *

DEAN: Chuck has sworn up and down to me —

PRESIDENT: I'm going to say you, John Dean, was Colson involved?

DEAN: I have no information that he was at all.

PRESIDENT: Post?

DEAN: Technical problems.

PRESIDENT: Those two things you mentioned last night.

DEAN: That and, uh, let's face it, there's other technical problems, but, you know —

PRESIDENT: Hm. Yeah.

DEAN: It's, uh, it's, uh, all the obstruction is technical stuff that mounts up.

PRESIDENT: Yeah, Well, you take, for example, the clemency stuff. That's solely Mitchell, apparently, and Colson's talk with, uh, Bittman where he says, "I'll do everything I can because as a, as a friend —"

DEAN: No, that was with Ehrlichman.

PRESIDENT: Huh?

DEAN: That was Ehrlichman.

PRESIDENT: Ehrlichman with who?

DEAN: Ehrlichman and Colson and I sat up there, and Colson presented his story to Ehrlichman

PRESIDENT: I know.

DEAN: regarding it and, and then John gave Chuck very clear instructions on going back and telling him that it, you know, "Give him the inference he's got clemency but don't give him any commitment."

PRESIDENT: No commitment?

DEAN: Right.

PRESIDENT: Now that's all right. But first, if an individual, if it's no commitment — I've got a right to sit here — Take a fellow like Hunt or, uh, or, or a Cuban whose wife is sick and something and that's what clemency's about.

DEAN: That's right.

PRESIDENT: Correct?

DEAN: That's right.

PRESIDENT: But, uh, but John specifically said, "No commitment," did he? He —

DEAN: Yeah.

PRESIDENT: No commitment. Then, then Colson then went on to, apparently —

DEAN: I don't know how Colson delivered it, uh,

PRESIDENT: Apparently to Bittman —

DEAN: for —

PRESIDENT: Bittman. Is that your understanding?

DEAN: Yes, but I don't know what his, you know, specific —

PRESIDENT: Where did this business of the Christmas thing get out, John? What the hell was that?

DEAN: Well, that's a, that's a —

PRESIDENT: That must have been Mitchell, huh?

DEAN: No, that was Chuck, again. I think that, uh —

PRESIDENT: That they all, that they'd all be out by Christmas?

DEAN: No, I think he said something to the effect that Christmas is the time that clemency generally occurs.

PRESIDENT: Oh yeah.

Dean: Uh —

PRESIDENT: Well, that doesn't — I, I, I don't think that is going to hurt him.

DEAN: No.

PRESIDENT: Do you?

DEAN: No.

PRESIDENT: "Clemency," he says — One (unintelligible) he's a friend of Hunt's. I'm just trying to put the best face on it. If it's the wrong — if it is — I've got to know.

DEAN: Well, one, one of the things I think you have to be very careful, and this is why Petersen will be very good, is, if you take a set of facts and let the prosecutors who have no — they'll be making, making no PR judgments.

PRESIDENT: Yeah.

DEAN: But they'll give you the raw facts as they related to the law, uh, and it's later you've got to decide, you know, what public face will be put on it. In other words, they'll — if their —

61. On April 16, 1973 from 10:50 to 11:04 a.m. the President, H.R. Haldeman and John Ehrlichman met. The President reported on his meeting with Dean. There was a discussion of a "scenario" of events after the President became aware that there were some discrepancies between what he had been told by Dean in the report that there was nobody in the White House involved.

In response to the Committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of that recording.

**Judiciary Committee Staff Summary of White House
Edited Transcript of April 16, 1973, Meeting, 10:50 to
11:04 a.m.**

The President asked Haldeman when the President was to see Rogers. He also asked how the scenario had worked out. Haldeman reported that it worked out very good. He began the scenario, saying, "You became aware sometime ago that this thing did not parse out the way it was supposed to and that there were some discrepancies between what you have been told by Dean in the report that there was nobody in the White House involved, which may still be true." The President said, "Incidentally, I don't think it will gain us anything by dumping on the Dean Report as such."

Ehrlichman raised a point made by Ziegler that when Dean returned from Camp David and said he could not write a report, that was the tip off and the President started to move.

The President asked, "How do I get credit for getting Magruder to the stand?" Ehrlichman replied, "Well it is very simple." Ehrlichman stated how Dean was replaced by Ehrlichman as the President's investigator. The President asked, "Why did I take Dean off? Because he was involved? I did it, really, because he was involved with Gray." Haldeman said, "(T)he scenario is that he (Dean) couldn't write a report so obviously you had to take him off." The President agreed, "Right, right." Ehrlichman continued by telling the President how he had talked to several witnesses and how he kept feeding information to the President until the President saw the dimensions of this thing. Haldeman told the President "You brought Len Garment in." Ehrlichman said, "You began to move."

Ehrlichman said that the President decided to have Mitchell, Strachan and Magruder brought in. The President asked if he should say we brought them all in and Ehrlichman said "I don't think you can." Ehrlichman and Haldeman replied that they should not be named. Ehrlichman said, "But you should say, 'I heard enough that I was satisfied that it was time to precipitously move. I called the Attorney General over. . . .'"

62. On April 16, 1973 from 12:00 to 12:31 p.m. the President met with H. R. Haldeman. There was a discussion of what Haldeman might state publicly about his involvement in the transfer of cash from the White House to CRP.

In response to the Committee's subpoena for the tape recording and other evidence of that conversation, the Presi-

dent has produced an edited transcript of the recording.

***Judiciary Committee Staff Summary of White House
Edited Transcript of April 16, 1973, Meeting, 12:00 to
12:31 p.m.***

The President met with H. R. Haldeman in the Oval Office on April 16, 1973, from 12:00 to 12:31 p.m. The transcript is prefaced with the notation "Material unrelated to Presidential Actions deleted."

The President said, "Now we got a plan on how we stage this damn thing in the first stages. Ron's got it all worked out. We've gone over, and then he's got the use of this Advisory Group and —." The President asked, "What does this amount to Bob?" Haldeman discussed the "invariables" of the President acting before or after the Magruder story came out. Haldeman said the President must establish his position and what he has done, "and the scenario works pretty well on that." Haldeman presented a "scenario" from which the President could "run your backgrounder, tell your story." Haldeman said that when the case broke the President could say he got in to this and this was what he had done. He said it had led, as they fully expected it would, to the next major step. Haldeman said that Petersen could then disclose that Magruder had given the prosecutors a full report of what transpired and that allegations against others were being pursued, but that he would not discuss the matter further because of the potential danger of jeopardizing the rights of others.

63. On April 16, 1973 from 1:39 to 3:25 p.m. the President met with Henry Petersen. Ronald Ziegler was also present from 2:25 to 2:52 p.m. During this meeting Petersen gave the President a report on the investigation and a written memorandum summarizing the prosecutors' evidence as of that time implicating Haldeman and Ehrlichman. There was discussion of whether the President should ask Haldeman and Ehrlichman to resign.

In response to the Committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

***Judiciary Committee Staff Summary of White House
Edited Transcript of April 16, 1973, Meeting, 1:39 to
3:25 p.m.***

On April 16, 1973 the President met in his EOB office with Henry Petersen between 1:39 p.m. and 3:25 p.m.

* * * * *

... the President told Petersen ... that Petersen should understand that he was to talk only to the President and not to anyone else on the White House staff. The President said, "I am acting counsel and everything else." The only other person Petersen might talk to would be Dick Moore. If the President found that there was something he wanted to get to Petersen but was tied up, he might ask Moore to do it, the President said, and he asked Petersen if that was all right with him. Petersen said there was one reservation, and the President asked, "He might tell somebody else?" Petersen said no, that Dick Moore's name had been mentioned, apparently by one of the prosecutors, and he would have to ask them why, because they should not know Moore. The President replied that Petersen "better keep it with me then" because "I need caution — I don't want to — I don't want any questions raised on this."

The President then asked Petersen if it was correct that Petersen did "not want Magruder's (inaudible) to have him canned today." The President said that he had told Petersen that Magruder had to go, and he asked whether it might jeopardize Petersen's chance to plea bargain. Petersen said that was the case and indicated that they were concerned about "pull(ing) the string too tight on him before these other things are tied down."

Petersen then told the President that several months earlier he had asked Pat Gray, in a very casual conversation, whether he had ever received any documents from John Dean, that Gray told him he had not, and that "I just let it go at that." The President said, "My God." Petersen then said that Dean had told him he had also told Fred Fielding that he had given certain documents to Gray. Petersen told the President that he had seen Gray that day and asked him, and Gray said that it was absolutely untrue, that Dean had never given him anything. Petersen said he was going to talk to Fielding after he left the President's office to find out what Dean had told him. The President told Petersen that he had better ask Ehrlichman, too. The President told Petersen "what I know — for whatever it's worth because I did conduct my investi-

gation after I got this from you." The President said, "The wiretapping material and all that business — all that was, of course, turned over to the (inaudible), "but that also in the safe were "what they call political documents" that had no relation to the Watergate whatever, and he (apparently Dean) said "we just sealed that up and . . ." The President asked Petersen how he was going to reconcile Gray's recollection that he never got a thing and asked if the Director of the FBI would be called. Petersen replied, "We may have to."

The President said that Ehrlichman told him the same story. "I think Gray did get something. And probably destroyed it." The President then said, "My suggestion is that — I mean — I have alerted — I have a suggestion — I think you better talk with Ehrlichman." The President told Petersen that he had better tell Ehrlichman what Gray had told him.

64. On April 16, 1973 from 3:27 to 4:04 p.m. the President met with John Ehrlichman and Ronald Ziegler. There was a discussion of the information furnished by Henry Petersen.

In response to the Committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

***Judiciary Committee Staff Summary of White House
Edited Transcript of April 16, 1973,
Meeting, 3:27 to 4:04 p.m.***

On April 16, 1973 the President met with John Ehrlichman in his EOB office from 3:27 to 4:04 p.m. Ronald Ziegler was present for part of the meeting.

The President told Ehrlichman that Gray denied to Petersen that he ever got the bundle. "Oh, he's dumb," said the President.

65. On April 16, 1973 from 4:07 to 4:35 p.m. the President met with John Dean. The following is an index to certain of the subjects discussed during that conversation:

- Presidential statement in regard to Watergate.
- Haldeman, Ehrlichman and Dean's continued presence on the White House staff.
- Magruder's negotiations with the U.S. Attorneys.
- President's statement to Dean to tell the truth.
- Dean's proposed testimony before the grand jury in regard to the issue of Haldeman's prior knowledge of the DNC break-in.

- Possible discovery of Hunt and Liddy's involvement in the Fielding break-in.

- Senate Select Committee and the failure of "containment" during the past nine months.

66. On April 16, 1973 from 8:58 to 9:14 p.m. the President spoke by telephone with Henry Petersen. Petersen gave the President a report. The President said he would not pass the information on because he knew the rules of the Grand Jury.

In response to the Committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

***Judiciary Committee Staff Summary of White House
Edited Transcript of April 16, 1973, Telephone
Conversation 8:58 to 9:14 p.m.***

The President had a telephone conversation with Assistant Attorney General Henry Petersen from 8:58 to 9:14 p.m. on April 16, 1973. The President asked if there had been any developments that he ought to know about and told Petersen "of course, as you know, anything you tell me, as I think I told you earlier, will not be passed on." Petersen replied that he understood, and the President said, "Because I know the rules of the Grand Jury."

Petersen told the President that Colson was present with Dean and Ehrlichman when Ehrlichman advised about telling Hunt to get out of town. Therefore, Colson would be called before the Grand Jury. With respect to Haldeman, Petersen told the President that Mitchell had requested Dean to activate Kalmbach for payments of money after June 17. Dean had said he did not have authority and went to Haldeman, who gave him the authority, and Dean then got in touch with Kalmbach to arrange for money. Petersen said that Kalmbach would also be called as a grand jury witness.

* * * * *

The President again asked how Colson was involved and whether he would be called. As the conversation ended the President told Petersen to call him, even if it was the middle of the night, if anything came up, and Petersen agreed to do so.

67. On April 17, 1973 from 9:47 to 9:59 a.m. the President met with H. R. Haldeman. The President instructed Haldeman to tell Kalmbach that LaRue was talking freely.

There was discussion of the problem raised by Dean's efforts to get immunity.

In response to the Committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording.

69. On April 17, 1973 at 10:26 a.m. Gray met with Petersen in Gray's office. Gray has testified that he admitted to Petersen that he had received files from Dean in Ehrlichman's office and told Petersen that he had burned the files without reading them. Petersen told Gray that the assistant U.S. attorneys would want him before the grand jury. During the afternoon of April 17 Petersen told the President that Gray had admitted destroying documents he received from Dean.

Henry Petersen Testimony, August 23, 1973

HP Yeah. Incidentally, I talked with Pat Gray again
P Yeah

HP I went back again today

P Do you think you can put that piece together?

HP Yes sir—I'll tell you what happened. He said he met with Ehrlichman—in Ehrlichman's office—Dean was there and they told him they had some stuff in Hunt's office that was utterly unrelated to the Watergate Case. They gave him two manila envelopes that were sealed. He took them. He says, they said get rid of them. Dean doesn't say that. Dean says I didn't want to get rid of them so I gave them to Gray. But in any event, Gray took them back, and I said Pat where are they, and he said I burned them. And I said

P He burned them?

HP I said that's terrible.

P Unrelated — only thing he can say was — he did it because it was political stuff I suppose?

HP Well, you know, the cynics are not going to believe it was unrelated.

P Oh yes of course.

HP I said, did you read it?

P Who handed it to him, Dean? Who knows the contents?

HP Dean and Ehrlichman. Dean — Gray says he never looked at it never read it.

P Did Dean? — did we ask Dean what the contents were?

HP I didn't ask Dean because he said it was

P Did anybody?

HP Not at this point. We'll have get to that obviously.

P Sure. Dumb damn thing to do.

HP I think it is incredible and I just

P Why didn't he just put it (inaudible)

HP I said Pat why did you do it.

P Pat's naive.

HP He said -well, I suppose because I took them at their word.

70. On April 17, 1973 from 12:35 to 2:20 p.m. the President met with H.R. Haldeman and John Ehrlichman. Ronald Ziegler joined the meeting from 2:10 to 2:17 p.m. There was a discussion about what to do about Dean and what Dean might say if he were fired; about the motive for making payments to the defendants; about what Strachan would say concerning intelligence material received from Magruder; and about whether Dean had reported to the President in the summer of 1972. There was also discussion of a press plan.

In response to the Committee's subpoena for the tape recording and other evidence of that conversation, the President has produced an edited transcript of the recording. A summary of that transcript has been prepared.

Judiciary Committee Staff Summary of White House Edited Transcript of April 17, 1973, Meeting

Ehrlichman told the President that his action plan involved the President's suspension of firing of Dean in the course of an historical explanation of the President's reliance on the Dean report and his apparent unreliability. The President replied that Garment had been in that day and said that it was going to come out anyway, and that was Petersen's view, as well. The President said Petersen told him on Sunday that it was all going to come out and Haldeman and Ehrlichman were going to resign. The President said he had asked Petersen again the preceding day, saying that it was "pretty dammed flimsy," and Petersen said that he was not talking about legal exposure but about the fact that "as this stuff comes out they're going to be eaten, but eaten alive" and that the clamor will be something the President could not stand. The President said he asked Petersen if it would be better "to get leave or something," and he said, "No, this is the government," that they couldn't later have Haldeman against Dean, and Haldeman against Ehrlichman, Ehrlichman against Dean, because they'd definitely say, "Mr. President, can't you let these fellas —".

Ehrlichman returned to his plan, which he said would involve a recounting of how the President got into his personal investigation by reason of Dean's being unable to reduce

his full report to writing for the President, that this rang a bell, and that the President personally turned to . . .

74. On April 17, 1973 from 4:42 to 4:45 p.m. the President issued a public statement containing two announcements. The President first announced that White House personnel would appear before the Senate Select Committee, but would reserve the right to assert executive privilege during the course of questioning. He then reported that on March 21 he had begun intensive new inquiries into the whole Watergate matter and that there had been major developments in the case. The President stated he had expressed to the appropriate authorities his view that there should be no immunity from prosecution for present or former high Administration officials. The President said that those still in government would be suspended if indicted and discharged if convicted.

75. On April 17, 1973 the President met in his EOB office with William Rogers from 5:20 to 6:19 p.m. and with H.R. Haldeman and John Ehrlichman from 5:50 to 7:14 p.m. The President briefed Rogers on his investigation and his discussion with Petersen. There was a discussion of whether Haldeman, Ehrlichman and Dean should resign and of Dean's testimony against Haldeman and Ehrlichman. Haldeman and Ehrlichman reported on their conversation with John Wilson, a defense attorney in criminal cases who had been recommended by Rogers. There was a discussion of what Dean had told Kalmbach about the purpose of the money he was asked to raise.

In response to the Committee's subpoena for the tape recording and other evidence of the President's conversations of April 17, 1973 from 5:50 to 7:14 p.m., the President has produced an edited transcript of the recording of his conversations from 5:20 to 7:14 p.m.

76. In April 1973 former and present White House aides and CRP officials were interviewed by the prosecutors or called before the Watergate Grand Jury. These included E. Howard Hunt, Gordon Liddy, Jeb Magruder, Gordon Strachan, Richard Moore, Dwight Chapin, Herbert Kalmbach, James McCord, Fred LaRue, Herbert Porter, John Mitchell, Charles Colson and John Dean.

77. On April 18, 1973 the President had telephone conversations with Henry Petersen from 2:50 to 2:56 p.m. and from 6:28 to 6:37 p.m. Petersen has testified that the President told him that Dean said he had been granted immunity and the President had it on tape, and that Petersen denied that Dean had been granted immunity. Petersen told the President that the prosecutors had received evidence that Gordon Liddy and E. Howard Hunt had burglarized the of-

fice of Dr. Fielding, Daniel Ellsberg's psychiatrist. The President told Petersen that he knew of that event; it was a national security matter; Petersen's mandate was Watergate; and Petersen should stay out of the Fielding break-in. The President told Petersen that the prosecutors should not question Hunt about national security matters. After this telephone call, Petersen relayed this directive to Silbert.

In response to the Committee's subpoena for the tape recording and other evidence of the telephone conversations between the President and Petersen from 2:50 to 2:56 p.m. and from 6:28 to 6:37 p.m., the President has produced an edited transcript of the conversation from 2:50 to 2:56 p.m., during which the President and Petersen discussed immunity for Dean and Magruder. A summary of that transcript has been prepared. The President has informed the Committee that the telephone call from 6:28 to 6:37 p.m. was placed from Camp David and was not recorded.

Henry Petersen Testimony, August 23, 1973, Watergate Grand Jury

He said, "What else is new?" I said, "I got this report that Liddy and Hunt burglarized Fielding's office."

Q Can I interrupt you for a second with that? Is this the first that you had ever heard in this investigation of the President or his agents tape recording any conversations?

A Yes, but it didn't surprise me.

Q I'm sorry. Go on.

A With respect to the second part of this conversation, I would be surprised to learn that a chief of state did not record conversations and I assumed when I spoke with him that our conversations were being recorded.

In any event, he said, "What else is new?", and then I dropped the next bombshell. It was that Dean had informed Silbert that Liddy and Hunt and company had burglarized Dr. Fielding's office who was Ellsberg's psychiatrist.

The President said, "I know about that. That's a national security matter. Your mandate is Watergate. You stay out of that."

I said, "Well, I have caused a check to be made, and we don't have any information of that nature in the case." I said, "Do you know where there is such information?", and he said no.

He said, "There's nothing you have to do." Then I got off the phone.

I called Mr. Silbert and told him what the President had said. I guess he was kind of upset about it. He just kind of

grunted or groaned. I said, "Well, Earl, that's it."

78. On April 19, 1973 John Dean issued a public statement declaring in part that he would not become a scapegoat in the Watergate case. He added that anyone who believed that did not know the true facts nor understand our system of justice. Following Dean's statement, Stephen Bull of the President's White House staff checked with the Secret Service agent in charge of the White House taping system to determine if Dean knew about the existence of the taping system. The agent replied that as far as the Secret Service knew Dean had no such knowledge.

80. On April 19, 1973 from 8:26 to 9:32 p.m. the President met with John Wilson and Frank Strickler, attorneys for H.R. Haldeman and John Ehrlichman. There was a discussion of the case against Haldeman and Ehrlichman.

The Committee has requested the tape recording and other evidence of this conversation. The President has provided an edited transcript of that recording.

81. Between April 19 and April 26, 1973 the President had eleven conversations with Henry Petersen. Petersen has testified that during these conversations the President asked Petersen for a detailed written report on the Watergate matter; discussed the advisability of retaining Haldeman and Ehrlichman at the White House; and discussed the progress of the Grand Jury investigation. Petersen has testified that some time in the course of the April discussions the President made a flattering reference to Petersen as an adviser to the President and said he would have to serve as "White House counsel." The President also asked Petersen whether he would like to be FBI director, but stated he was not offering him the job.

84. On April 25 and 26, 1973 Presidential aide Stephen Bull delivered a number of tape recordings of Presidential conversations to H.R. Haldeman. At the President's request Haldeman listened to the tape recording of the President's March 21, 1973 morning meeting with John Dean, made notes and reported to the President.

85. On April 26, 1973 Senator Lowell Weicker, a member of the Senate Select Committee, released to the press information that Patrick Gray had burned politically sensitive files which had been given to him by John Dean from Howard Hunt's White House safe. Petersen has testified that on this date the President telephoned him to ask if Gray ought to resign as Acting FBI Director and that Petersen told the President that he thought Gray's position was untenable. At the President's instruction, Petersen, Gray and Kleindienst met that evening and discussed Gray's possible resignation.

Kleindienst telephoned the President and recommended that Gray step down, but added that Gray did not see it that way. The President told Kleindienst that he would not require Gray to resign immediately. Gray has testified that Kleindienst also stated after speaking to the President there must be no implication that in burning these files there was any attempt of a coverup at the White House.

87. On the afternoon of April 27, 1973 Patrick Gray notified Lawrence Higby that he was resigning as Acting Director of the FBI. From 4:31 to 4:35 p.m. on April 27, the President had a telephone conversation with Petersen during which the President asked if Petersen had any information that would reflect on the President. Petersen said no. At the President's request, Petersen met with the President from 5:37 to 5:43 p.m. and from 6:04 to 6:48 p.m. The President again asked if there was adverse information about the President. Petersen said he was sure that the prosecutors did not have that type of information.

The Committee has requested the tape recordings and other evidence of various Presidential conversations on the afternoon and evening of April 27, 1973. The President has produced edited transcripts of the conversations between the President and Petersen from 5:37 to 5:43 p.m. and among the President, Petersen and Ronald Ziegler from 6:04 to 6:48 p.m.

88. On or about April 28, 1973 H.R. Haldeman and John Ehrlichman determined that they should resign from their positions on the White House staff. Haldeman and Ehrlichman have testified that the President did not request their resignations.

89. On April 29, 1973 the President met with Attorney General Richard Kleindienst at Camp David. They discussed Kleindienst's resignation as Attorney General. The President asked Kleindienst if he could announce Kleindienst's resignation in his statement the next day and Kleindienst consented. Also on that date the President met with Elliot Richardson at Camp David and informed him of his intention to nominate Richardson to be Attorney General. The President told Richardson that he would commit to Richardson's determination whether a special prosecutor was needed.

90. On April 30, 1973 the President made a nationwide televised address on the Watergate matter. He announced the resignations of H. R. Haldeman, John Ehrlichman, Richard Kleindienst and John Dean and the appointment of Elliott Richardson as Attorney General of the United States.

Statement of Information Submitted on Behalf Of The President

BOOK I: WATERGATE

The following Statements of Information and related evidence are taken from Book I of four such statements submitted by James St. Clair, Special Counsel to the President. It covers a period from just after the break-in to the day the burglars were sentenced. No statements were deleted, but only the high points of the evidence are retained here.

1. On Monday, June 19, 1972, two days after the break-in of the Democratic National Committee Headquarters, Dean contacted Liddy and Liddy told Dean the men caught in the Democratic National Committee Headquarters were Liddy's men and that Magruder had pushed him to do it. Dean asked Liddy if anyone from the White House was involved and Liddy told Dean no.

2. John Dean testified that on June 18, 1972, one day after the break-in of the Democratic National Committee Headquarters, "the cover-up was already in effect, in being." Dean testified he was in on the cover-up from the very beginning. Dean concurred with Senator Gurney that the cover-up "grew like Topsy, and Dean was a part of it." When questioned if he advised the President of what was going on, Dean responded that the first time he ever talked to the President was September 15, 1972, some three months later.

3. Dean did not meet with the President until approximately three months after the Democratic National Committee Headquarters break-in. The allegation that Dean informed the President of an illegal cover-up on September 15, 1972, is based exclusively on the testimony of Dean. In testimony before the Senate Select Committee, Dean stated he was "certain after the September fifteenth meeting that the President was fully aware of the cover-up." However, in answering questions of Senator Baker, he modified this by agreeing that it was an "inference" of his. Later Dean admitted he had no personal knowledge that the President knew on Sep-

tember fifteenth about a cover-up of Watergate.

4. On May 22, 1973, the President stated that the bugging, and burglary of the Democratic National Committee was a complete surprise and that he had no prior knowledge that persons associated with his campaign had planned such activities. On March 21, 1973, John Dean told the President that no one at the White House knew of the plans to break in the Democratic National Committee.

5. H.R. Haldeman and John Ehrlichman testified before the Senate Select Committee that they did not believe the President had prior knowledge of the break-in plans. On March 21, 1973, John Ehrlichman told the President that, on the basis of information he had, no one in the White House had been involved, had notice, had knowledge, participated nor aided or abetted in any way in the Democratic National Committee burglary.

6. John Mitchell testified before the Senate Select Committee that the President did not know of either the burglary plans or the cover-up. Richard Moore testified before the Senate Select Committee that as a result of his meetings with the President and Dean on March 20, 1973, he concluded that the President had no knowledge that anyone in the White House was involved in the Watergate affair and John Dean told him as they departed that he had never told the President.

Richard Moore Senate Watergate Committee Testimony, July 12, 16, 1973

As I sat through the meeting of March 20 with the President and Mr. Dean in the Oval Office, I came to the conclusion in my own mind that the President could not be aware of the things that Dean was worried about or had been hinting at to me, let alone Howard Hunt's blackmail demand. Indeed, as the President talked about getting the whole story out — as he had done repeatedly in the recent meetings — it seemed crystal clear to me that he knew of nothing that was inconsistent with the previously stated conclusion that the White House was uninvolved in the Watergate affair, before or after the event.

As we closed the door of the Oval Office and turned into the hall, I decided to raise the issue directly with Mr. Dean. I said that I had the feeling that the President had no knowledge of the things that were worrying Dean. I asked Dean whether he had ever told the President about them. Dean replied that he had not, and I asked whether anyone else had. Dean said he didn't think so. I said, and I use quotation

marks to indicate the substance, and I think these are almost my precise words — I said, "Then the President isn't being served, he is reaching a point where he is going to have to make critical decisions and he simply has to know all the facts. I think you should go in and tell him what you know, you will feel better, it will be right for him, and it will be good for the country."

But nothing said in my meetings or conversations with Mr. Dean or my meetings with the President suggests in any way that before March 21 the President had known—or that Mr. Dean believed he had known—of any involvement of White House personnel in the bugging or the coverup. Indeed, Mr. Dean's own account that he and I agreed on the importance of persuading the President to make a prompt disclosure of all that the President had just learned is hardly compatible with a belief on Mr. Dean's part that the President himself had known the critical facts all along. In one of my talks with the President, the President said he had kept asking himself whether there had been any sign or clue which should have led him to discover the true facts earlier. I told him that I wished that I had been more skeptical and inquisitive so that I could have served the Presidency better.

MR. LENZNER: Let me ask you this, Mr. Moore. You did testify that when you left the Oval Office on March 20, I concluded the President could not be aware of the things that Mr. Dean was worried about. Now, did that include, for example, the threat by Mr. Hunt to blackmail the White House?

MR. MOORE: Yes.

7. After the second meeting in Mitchell's office on February 4, 1972, the modified Liddy plan was turned down and Dean concluded the plan was at end. Dean later met with Haldeman and advised Haldeman that the White House should have nothing to do with any such activity. Haldeman agreed.

8. Magruder reported to Strachan that a "sophisticated political intelligence gathering system" had been approved. Strachan included this item in a memo containing approximately 30 other items directed to Haldeman. Attached at tab "H" of this report were examples of the type information being developed and identified by the code name "Sedan Chair." Magruder and Reisner testified "Sedan Chair" involved a disgruntled campaign worker from the Humphrey Pennsylvania Organization who passed information to Committee to Re-Elect the President. Porter deemed this activity surreptitious but not illegal.

9. Dean told the President on March 21, 1973 that Halde-

man was assuming that the Committee to Re-Elect the President had an intelligence gathering operation conducted by Liddy that was proper. Dean told the President there was nothing illegal about "Sedan Chair."

White House Transcript, March 21, 1973,

10:22- 11:55 a.m. Meeting:

P When was this?

D This was apparently in February of '72.

P Did Colson know what they were talking about?

D I can only assume, because of his close relationship with Hunt, that he had a damn good idea what they were talking about, a damn good idea. He would probably deny it today and probably get away with denying it. But I still — unless Hunt blows on him—

P But then Hunt isn't enough. It takes two doesn't it?

D Probably. Probably. But Liddy was there also and if Liddy were to blow — Then you have a problem — I was saying as to the criminal liability in the White House.

D I will go back over that, and take out any of the soft spots.

P Colson, you think was the person who pushed?

D I think he helped to get the thing off the dime. Now something else occurred though—

P Did Colson — had he talked to anybody here?

D No. I think this was —

P Did he talk with Haldeman?

D No, I don't think so. But here is the next thing that comes in the chain. I think Bob was assuming, that they had something that was proper over there, some intelligence gathering operation that Liddy was operating. And through Strachan, who was his tickler, he started pushing them to get some information and they — Magruder — took that as a signal to probably go to Mitchell and to say, "They are pushing us like crazy for this from the White House. And so Mitchell probably puffed on his pipe and said, "Go ahead," and never really reflected on what it was all about. So they had some plan that obviously had, I gather, different targets they were going to go after. They were going to infiltrate, and bug, and do all this sort of thing to a lot of these targets. This is knowledge I have after the fact. Apparently after they had initially broken in and bugged the DNC they were getting information. The information was coming over here to Strachan and some of it was given to Haldeman, there is no doubt about it.

P Did he know where it was coming from?

D I don't really know if he would.

P Not necessarily?

D Not necessarily. Strachan knew it. There is no doubt about it, and whether Strachan — I have never come to press these people on these points because it hurts them to give up that next inch, so I had to piece things together. Strachan was aware of receiving information, reporting to Bob. At one point Bob even gave instructions to change their capabilities from Muskie to McGovern, and passed this back through Strachan to Magruder and apparently to Liddy. And Liddy was starting to make arrangements to go in and bug the McGovern operation.

P They had never bugged Muskie, though, did they?

D No, they hadn't, but they had infiltrated it by a secretary.

P By a secretary?

D By a secretary and a chauffeur. There is nothing illegal about that. So the information was coming over here and then I, finally, after —. The next point in time that I became aware of anything was on June 17th when I got the word that there had been this break in at the DNC and somebody from our committee had been caught in the DNC. And I said, "Oh, (expletive deleted)." You know, eventually putting the pieces together—

P You knew what it was.

D I knew who it was. So I called Liddy on Monday morning and said, "First, Gordon, I want to know whether anybody in the White House was involved in this." And he said, "No, they weren't."

10. Political Matters Memo #18 was prepared by Strachan and submitted to Haldeman on March 31, 1972. On April 4, 1972 Strachan prepared a talking paper including the mention of the "sophisticated intelligence gathering operation" for use by Haldeman in a meeting he was having with Mitchell on that day. The paper was returned to Strachan and filed with Memo #18 after Haldeman met with Mitchell. Strachan testified the subject of intelligence gathering was never raised again by Haldeman. Strachan is certain none of the Political Matters Memo had the "P" with a check mark through the "P" which was the procedure used for memos discussed in that form with the President.

11. Haldeman has testified that he and Mitchell did not discuss intelligence gathering activities with the President on April 4, 1972, and that he and Mitchell only reviewed with the President matters relating to the ITT-Kleindienst hearings and arguments of regional campaign responsibilities. Haldeman's notes of the meeting show no political intelligence

gathering operations were discussed. The transcript of April 4, 1972, meeting between the President, Haldeman, and John Mitchell confirms that there was no discussion of campaign intelligence gathering activities.

12. The President had no knowledge of any attempt by the White House to cover-up involvement in the Watergate affair. Dean told the President that there were things Dean knew the President had no knowledge of.

(NOTE: Objection has been raised by Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.)

13. The testimony of Gray before the Senate Select Committee establishes that the origin of the theory of Central Intelligence Agency involvement in the break-in of the DNC was in the FBI and that Gray communicated the theory to Dean on June 22, 1972. Dean confirmed that Gray informed him on June 22, 1972 that one of the FBI theories of the case was that it was a CIA operation and Dean testified that he reported this to Haldeman and Ehrlichman on June 23.

(NOTE: Objection has been raised by Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.)

L. Patrick Gray Senate Watergate Committee Testimony, August 3, 1973

I met again with Mr. Dean at 6:30 p.m. the same day to again discuss the scheduling of interviews of White House staff personnel and to arrange the scheduling of these interviews directly through the Washington field office rather than through FBI headquarters. At this meeting I also discussed with him our very early theories of the case; namely, that the episode was either a CIA covert operation of some sort simply because some of the people involved had been CIA people in the past, or a CIA money chain, or a political money chain, or a pure political operation, or a Cuban right wing operation, or a combination of any of these. I also told Mr. Dean that we were not zeroing in on any one theory at this time, or excluding any, but that we just could not see any clear reason for this burglary and attempted intercept of communications operation.

14. Haldeman's testimony before the Senate Select Committee confirms that Dean reported to him the FBI's concern about CIA involvement, and that Haldeman in turn reported this to the President, who ordered Haldeman and Ehrlichman

to meet with the CIA officials to insure that the FBI investigation not expose any unrelated covert operation of the CIA. The uncertainty regarding the possibility of uncovering CIA activities was recognized in a memo dated June 28, 1972 from Helms to Walters.

15. The President stated on May 22, 1973, that it did seem possible to him that because of the involvement of former CIA personnel, the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in. The President stated he was also concerned that the Watergate investigation might lead to an inquiry into the activities of the Special Investigations Unit. Gray testified that on July 6, 1972, the President told him to continue to conduct his aggressive and thorough investigation of the Watergate affair.

16. The President indicated that he was unaware that Gray had destroyed documents found in Hunt's safe when told by Henry Petersen on April 17, 1973.

17. Dean did not disclose until November 2, 1973, while being questioned by attorneys of the Special Prosecutor's office, that he had personally destroyed documents from Hunt's safe.

18. The President was unaware prior to March 21, 1973, that Magruder and Porter perjured themselves to a grand jury. On April 17, 1973, the President advised Ehrlichman and Haldeman against perjury.

(NOTE: Objection has been raised by Congresswoman Holtzman and Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.)

19. John Dean advised the President on March 21, 1973, of Hunt's demand for approximately \$120,000 for legal fees and family support. The President explored the option of meeting Hunt's demands so as to secure the time needed to consider alternative courses. The President was not concerned with the possible Watergate related disclosures, but rather which disclosure of the National Security matters Hunt had been involved in as a member of the Plumbers.

The President advised Dean that the money could not be paid because it would look like a cover-up. At another point in the conversations the President requested advice as to whether or not the money should be paid. Later the President concludes that Hunt will blow the whistle no matter what is done for him.

20. At the March 21, 1973, meeting the President after considering several options seized on the possibility of calling a new grand jury, thereby delaying Hunt's sentencing and

making the immediate payment unnecessary as a means of buying time. Not once after this option was explored was there any suggestion that Hunt's demand be met.

The concluding page of the transcript of the March 21, 1973, morning meeting clearly demonstrates that the President recognized that any blackmail and cover-up activities then in progress could not continue. (NOTE: Objection has been raised by Congresswoman Holtzman and Congressman Seiberling as to whole statement being a conclusion rather than a statement of information within the Rules of Procedure of the Committee.)

**White House Transcript of March 21, 1973,
10:12-11:55 a.m. Meeting**

H But John's view is if we make the public statement that we talked about this morning, the thing we talked about last night — each of us in our hotel, he says that will immediately lead to a Grand Jury.

P Fine — alright, fine.

H As soon as we make that statement, they will have to call a Grand Jury.

P They may even make a public statement before the Grand Jury, in order to —

So it looks like we are trying to do it over.

D Here are public statements, and we want full grand jury investigations by the U.S. Attorney's office.

P If we said that the reason we had delayed this is until after the sentencing — You see that the point is that the reason time is of the essence, we can't play around on this. If they are going to sentence on Friday, we are going to have to move on the (expletive deleted) thing pretty fast. See what I mean?

D That's right.

P So we really have a time problem.

D The other thing is that the Attorney General could call Sirica, and say that, "The government has some major developments that it is considering. Would you hold sentencing for two weeks?" If we set ourselves on a course of action.

P Yep, yep.

D See, the sentencing may be in the wrong perspective right now. I don't know for certain, but I just think there are some things that I am not at liberty to discuss with you, but I want to ask that the Court withhold two weeks sentencing.

H So then the story is out: "Sirica delays sentencing Watergate" —

D I think that could be handled in a way between Sirica

and Kleindienst that it would not get out. Kleindienst apparently does have good rapport with Sirica. He has never talked since this case developed, but —

P That's helpful. So Kleindienst should say that he is working on something and would like to have a week. I wouldn't take two weeks. I would take a week.

H We should change that a little bit. John's point is exactly right. The erosion here now is going to you and that is the thing that we have to turn off at whatever cost. We have to turn it off at the lowest cost we can, but at whatever cost it takes.

D That's what we have to do.

P Well, the erosion is inevitably going to come here, apart from anything and all the people saying well the Watergate isn't a major issue. It isn't. But it will be. It's bound to. (Unintelligible) has to go out. Delaying is the great danger to the White House area. We don't, I say that the White House can't do it. Right?

Yes, Sir.

21. Neither of the participants of the March 21, 1973, morning meeting came away with any opinion that the President authorized payments to Hunt. Haldeman concluded that the President rejected payments to Hunt. Dean testified: "The money matter was left very much hanging at the meeting. Nothing was resolved."

22. At the March 21, 1973, morning meeting while discussing the practicality of getting another grand jury the President told Dean and Haldeman to get Mitchell to come to Washington, so that Mitchell could meet with Haldeman, Ehrlichman and Dean.

23. Haldeman and Dean left the meeting with the President at approximately 11:55 a.m. on March 21, 1973. Pursuant to the President's request Haldeman called Mitchell at approximately 12:30 p.m. and requested Mitchell come to Washington. Dean's testimony confirms this.

24. On March 21, 1973 Dean had a telephone conversation with LaRue concerning Hunt's request for money and Dean suggested LaRue call Mitchell. LaRue called Mitchell in the early afternoon of March 21, 1973 and advised Mitchell that he had a request for \$75,000 for Hunt's legal fees. Mitchell acknowledges that he advised LaRue to pay the money for attorney fees. During the March 21, 1973 late afternoon meeting with the President, Dean denied that he had spoken to either LaRue or Mitchell, when in fact he had spoken to both.

25. Having received information on March 21, 1973 of possible obstruction of justice having taken place following

the break-in of the DNC, the President promptly undertook an investigation into the facts. The record discloses that the President started his investigation the night of his meeting with Dean on March 21st, as confirmed by Dean in his conversation with the President on April 16, 1973. At the meeting with Mitchell and the others on the afternoon of March 22nd, the President instructed Dean to prepare a written report of his earlier oral disclosures.

26. Although Dean was instructed to go to Camp David and write a report on March 22, 1973 by the President, Dean denied this and later testified before the Senate Select Committee that he was never requested to write a report until Haldeman called him after he arrived at Camp David.

27. Just six days after Dean's disclosures, on March 27, 1973, the President met with Ehrlichman and Haldeman to discuss the evidence thus far developed and how best to proceed. Again the President stated his resolve that White House officials should appear before the grand jury. They confirmed to the President, as Dean had, that no one at the White House had prior knowledge of the Watergate break-in. Ehrlichman told the President that there wasn't "a scintilla of a hint that Dean knew about this." The President asked about the possibility of Colson having prior knowledge and Ehrlichman stated that Colson's response was "of total surprise...He was totally non-plussed, as the rest of us."

28. On April 8, 1973, the President met with Ehrlichman and Haldeman on board Air Force One and directed them to meet with Dean and urge him to go to the grand jury. Haldeman and Ehrlichman met with Dean that afternoon and at 7:33 p.m. Ehrlichman reported to the President that Dean indicated he would agree to go before the grand jury.

John Ehrlichman Senate Watergate Committee Testimony, July 27, 1973

Now, in San Clemente again when we came to this funny conflict between Dean and Mitchell, I mentioned that to him, and I said "We are trying to get to the bottom of it," and two or three times he said "Have you got that figured out yet?" and when we talked on the airplane going back and we talked about Dean going to the grand jury and he said finally "I am not going to wait, he is going to go." He said: "Have you ever figured out what that is," and I said "No, we are going to see Dean. We don't know what that is."

Senator Gurney. Well now, did you make a complete report to the President?

Ehrlichman: Yes, sir.

Senator Gurney. When was that?

Ehrlichman: That was on Saturday morning, April 14.

**White House Transcript of April 8, 1973,
7:33-7:37 p.m. Meeting — Telephone conversation:
The President and Ehrlichman**

P Oh, John. Hi.

E I just wanted to post you on the Dean meeting. It went fine. He is going to wait until after he's had a chance to talk with Mitchell and to pass the word to Magruder through his lawyers that he is going to appear at the Grand Jury. His feeling is that Liddy has pulled the plug on Magruder and that (unintelligible) he thinks he knows it now. And he says that there's no love lost there, and that that was Liddy's motive in communicating informally.

P Uh, huh.

E At the same time, he said there isn't anything that he, Dean, knows or could say that would in any way harm John Mitchell.

P But, it would harm Magruder.

E Right. And his feeling is that Sirica would not listen to a plea of immunity at a (unintelligible) I should say. And that (unintelligible) from him. He would be much better off to go in there and have an informal talk and that's what he wants to do.

P Right.

E So obviously we didn't tell him not to, but we did say that it is important that the other people know what he was doing.

29. Dean did in fact communicate his intention to testify before the grand jury to Mitchell and Magruder and told them he would not agree to support Magruder's previous testimony to the grand jury. Thereafter on April 14, 1973, Magruder appeared before the U.S. Attorneys and cooperated with them fully.

30. On April 14, 1973, the President again met with Ehrlichman and Haldeman to review the results of three weeks investigation and to determine the future course of action. Based on Ehrlichman's report, the President concluded Mitchell should go before a grand jury. The President instructed Ehrlichman to see Magruder and tell him that he did not serve the President by remaining silent. The President told Ehrlichman that when he met with Mitchell to advise him that "the President has said let the chips fall where they

may. He will not furnish cover for anybody." The President told Ehrlichman to tell Magruder to purge himself and tell this whole story.

31. On April 15, 1973, the President met with Attorney General Kleindienst. They considered who should be in charge of the continuing investigation. The President met with Assistant Attorney General Petersen on the afternoon of April 15, 1973, in his EOB office. At this meeting Petersen indicated there was no criminal case on Haldeman and Ehrlichman at this time. Having been told Liddy would not talk unless authorized by "higher authority" the President instructed Petersen to tell Liddy's counsel the President would confirm his urging of Liddy to cooperate.

32. The President met with Dean on the morning of April 16, 1973, discussed with Dean his resignation, and advised him to be totally truthful in his explanations. The President asked Dean not to lie about the President either.

At this same meeting Dean explained to the President that (Paul) O'Brien had been the one who relayed Hunt's demand, that Dean had informed Ehrlichman and Ehrlichman advised Dean to inform Mitchell which Dean did. Dean told the President that all along he had tried to make sure that anything he passed to the President didn't cause the President any personal problems.

33. On April 27, Petersen reported to the President that Dean's lawyer was threatening that unless Dean got immunity they would bring "the President in — not this case but in other things." The President told Petersen to use immunity if he needed to get the facts, but there would be no blackmail. It was not until June 25, 1973, while testifying before the Senate Select Committee that Dean stated the President had prior knowledge of the cover-up.

34. On March 1, 1973, a federal grand jury returned an indictment against seven individuals charging all defendants with one count of conspiracy in violation of Title 18 U.S.C. Sec. 371 and charging some of the defendants with additional charges of perjury, making false declarations to a grand jury or court, making false statements to agents of the FBI and obstruction of justice.

BOOK IX: THE PRESIDENT AND THE SPECIAL PROSECUTOR

The following Statements of Information and related evidence are taken from Book IX of the House Judiciary Committee publications. Book IX, composed of two volumes, deals with the President's relation to the Watergate Special Prosecutors. The short selection from Book III deals directly with Section 4 of The First Article of Impeachment.

5. On May 21, 1973 Richardson appeared before the Senate Judiciary Committee with Special Prosecutor designate Archibald Cox. Richardson submitted to the Committee a statement of the duties and responsibilities of the Special Prosecutor which included a number of suggestions he had received from members of the Committee and from Cox. The statement provided that the Special Prosecutor would have jurisdiction over offenses arising out of unauthorized entry into the DNC headquarters at the Watergate, offenses arising out of the 1972 Presidential election, allegations involving the President, members of the White House staff or Presidential appointees and other matters which he consented to have assigned by the Attorney General and that he would have full authority for determining whether or not to contest the assertion of executive privilege or any other testimonial privilege. The guidelines also provided that the Special Prosecutor would not be removed except for extraordinary improprieties. After Richardson's confirmation, the statement was promulgated and published as a formal Department of Justice regulation, effective May 25, 1973.

6. On May 22, 1973 the President issued a statement noting Richardson's selection of Archibald Cox and stating that Richardson had the President's full support in his determination to see the truth brought out. The President also stated that executive privilege would not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct in the matters then under investigation, including the Watergate affair and the alleged cover-up. On May 23, 1973 the Senate Judiciary Committee voted to report favorably on Richardson's nomination and on the same day Richardson was confirmed by the Senate. Richardson was sworn in as Attorney General on May 25, 1973. At the time of the swearing in, the President had a conversation with Richardson about the President's statement of May 22, 1973. According to Richardson, the

President told him that the waiver of executive privilege as to testimony referred to in that statement did not mean that there would be any such waiver of executive privilege as to documents.

House of Representatives
of the United States
Committee on the Judiciary

AFFIDAVIT

ELLIOT RICHARDSON, being duly sworn, in response to specific points of interest to counsel for the House Committee on the Judiciary, deposes and says:

1. From May 25, 1973 to October 20, 1973 I served as the Attorney General of the United States. While I held that position I had conversations with the President and others relating to the work of the Watergate Special Prosecution Force. This affidavit contains information relating to certain of those conversations and supplements my testimony in November, 1973 before the Senate Judiciary Committee.

2. On May 25, 1973, just before my swearing in as Attorney General of the United States, I had a brief conversation with the President in the Oval Office. The President referred to his statement of May 22, 1973 relating to the waiver of executive privilege as to testimony concerning Watergate, and told me that his statement did not mean that there would be any such waiver of executive privilege as to documents. I was not aware until then that the word "testimony" had been used advisedly in the President's May 22nd statement. I did not say anything in response to what the President told me.

3. On July 3, 1973 General Haig, the President's Chief of Staff, called me about a *Los Angeles Times* story that Mr. Cox was investigating expenditures related to the "Western White House" at San Clemente. I called Mr. Cox, who said that he was not investigating San Clemente. Mr. Cox explained that he had asked his press officer to assemble press clippings on San Clemente after Mr. Cox was questioned about San Clemente at a press conference. The press officer requested clippings from the *Los Angeles Times*, which had carried most of the articles. I called General Haig back and told him this. He said that I ought to get a statement from Mr. Cox saying that Mr. Cox was not investigating the matter. General Haig said that he was not sure the President was not going to move on this to discharge Mr. Cox, and that it could not be a matter of Cox's charter to investigate the President of the United States. I called Mr. Cox, who agreed

to make a statement. Some time after 1:00 p.m. I called back General Haig, who said the statement was inadequate. At this point the President broke in on the conversation. The President said that he wanted a statement by Mr. Cox making it clear that Mr. Cox was not investigating San Clemente, and he wanted it by two o'clock.

4. On July 23, 1973 General Haig called and told me that the "boss" was very "uptight" about Cox and complained about various of his activities, including letters to the IRS and the Secret Service from the Special Prosecutor's office seeking information on guidelines for electronic surveillance. General Haig told me that "if we have to have a confrontation we will have it." General Haig said that the President wanted "a tight line drawn with no further mistakes," and that "if Cox does not agree, we will get rid of Cox." In this instance Mr. Cox agreed that the requests for information contained in the letters sent by his office to Treasury Department agencies had been over-broadly stated.

5. In late September or early October 1973 I met with the President in regard to the Agnew matter. After we had finished our discussion about Mr. Agnew, and as we were walking toward the door, the President said in substance, "Now that we have disposed of that matter, we can go ahead and get rid of Cox." There was nothing more said.

(Signed:) Elliot Richardson

65. On October 20, 1973 the President instructed Richardson to discharge Cox. Richardson told the President that he could not comply with this directive and submitted his resignation. Haig thereupon called Deputy Attorney General William Ruckelshaus and asked Ruckelshaus to fire Cox. Ruckelshaus refused to carry out the President's directive and resigned. Haig called Solicitor General Robert Bork. Bork went to the White House where he agreed to fire Cox and signed a letter discharging Cox. Later that night White House Press Secretary Ziegler announced that the President had abolished the office of the Watergate Special Prosecution Force.

The Debate on Article I

FRIDAY, JULY 26, 1974

FIRST SESSION

Chairman: The Committee will be in order.

And pursuant to the rule, we will proceed with consideration of the proposed Articles of Impeachment.

Clerk: "RESOLVED, that Richard M. Nixon, President of the United States, is impeached for high crimes and misdemeanors and that the following Articles of Impeachment be exhibited to the Senate.

"Articles of Impeachment exhibited by the House of Representatives of the United States of America. In the name of itself and of all of the people of the United States of America, against Richard M. Nixon, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors."

"Article I"...

Sarbanes: Mr. Chairman, I have an amendment in the nature of a substitute to Article I of the proposed resolution. Mr. Chairman, the amendment is at Clerk's desk and a copy has been distributed to each member.

Chairman: In view of the fact that the rule provides that we deal with each article, the substitute amendment is in order at this time...

Chairman: The rules would provide that the Clerk would read...

Dennis: The original. That is the point.

Hungate: Mr. Chairman, might it be in order—we did receive these Wednesday night to afford us an opportunity and I take it, we are only talking about Article at this point—to seek unanimous consent that it be considered as read and open to amendment at any point?

Chairman: . . . the Clerk will read the substitute.

Clerk: "Article I.

"In his conduct of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws

be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

"On June 17, 1972, and prior thereto, agents of the Committee for the Re-election of the President. . . ."

Flowers: Mr. Chairman, parliamentary inquiry.

The Chair has not made a ruling and I would suggest that the parliamentary situation — I ought to ask the Chair's ruling if there is an amendment proposed, it must be proposed at the point the proposal would come up, and I do believe the panel is laboring under the impression that the entire article will be read and open for amendment at any point.

Chairman: The gentleman is advised that the substitute is open for amendment at any point.

Flowers: Well, Mr. Chairman, I respectfully suggest that that is the first time the Chair has ruled that way and you are saying it is open for amendment as it is being read or it will be read. . . .

Chairman: That is correct.

Flowers: Well, it is not open for amendment at any point until you reach that point, then; is that right, Mr. Chairman?

Chairman: Well, the whole amendment or the whole article would be read, but it would then be amended at any point, open for amendment at any point.

* * * * *

Chairman: I recognize the gentleman from Michigan, Mr. Hutchinson.

Hutchinson: Mr. Chairman, I want to express my opposition to the substitute as offered. . . .

It seems to me as though in writing an article of impeachment in this general language, that you leave the defendant or the respondent or whatever it is that we call him, grasping around trying to find out specifically what it is that he is charged with, what he has to answer to.

This is just a lot of generalities. You do not set forth any specific incidents. You do not — you do not — and I think that — I think it is fatal, fatal on that account.

* * * * *

Sandman: Mr. Chairman, I oppose the substitute as I do the original article for the same reasons set forth by the ranking members and also the gentleman from California... And I would like to direct a couple of questions to the gentleman from Maryland, if I can have his attention, please.

Sarbanes: Surely.

Sandman: Is it your understanding of the law that the Articles of Impeachment must be specific, and in order to meet the due process clause of the Constitution?

Sarbanes: I believe that this article that is presented to you meets the law of impeachment with respect to the problem that you raise.

Sandman: I did not ask that. I asked do you understand the law to say that an article of impeachment must be specific?

Sarbanes: In the same sense that a criminal indictment must be specific? I do not believe that the standards which govern the specificity of a criminal indictment are applicable to an Article of Impeachment, if that is the thrust of the gentleman's question.

Sandman: Well, now, do you not believe that under the due process clause of the Constitution that every individual, including the President, is entitled to due notice of what he is charged for? Do you believe that?

Sarbanes: I think this article does provide due notice.

Sandman: You are not answering my question.

Sarbanes: Well, I think I am answering your question.

Sandman: Well, let me ask you this, then. As I see this, you have about twenty different charges here, all on one piece of paper, and not one of them specific. The gentleman from California has asked you for a date, for example, on Charge 1 and 2. No date. You say that he withheld relevant material. When and how?

Is he not entitled to know that? How does he answer such a charge? This is not due process. Due process ...

Sarbanes: I would point out to the gentleman from New Jersey that the President's counsel entered this Committee room at the very moment that members of this Committee entered the room and began to receive the presentation of information, and that he stayed in this room ...

Sandman: I do not yield any further.

Sarbanes: ... throughout that process.

Sandman: I do not yield any further for those kinds of speeches. I want answers, and this is what I am entitled to. This is a charge against the President of the United States, why he should be tried to be thrown out of office, and that is what it is for. For him to be duly noticed of what you are charging him, in my judgment, he is entitled to know specifically what he did wrong, and how does he gather that from what you say here?

Sarbanes: My response to the gentleman is that the article sets out the means. The President's counsel has been here throughout the proceedings and is aware of the material that was presented to us, and that this article, in comparison ...

Sandman: One last question. One last question, and you can answer.

Do you or do you not believe, and you can say yes or no, that the President is entitled to know in the Articles of Impeachment specifically, specifically on what day he did that thing for which you say he should be removed from office?

Sarbanes: I do not believe that the article of impeachment is going to contain all the specific facts which go to support the article. If it were to do that, the article of impeachment would be 18 volumes, or whatever the number of volumes, are pertinent to place into it all of the specific information.

Sandman: I do not think it has to say that at all. But, I think it has to say that on a certain day he did something which is illegal, thus-and-so. You can say that in a simple sentence, but you are not saying that here. And, in fact, there is plenty of law on this point, and it says that these things shall not be general, these things shall not be general. They shall be specific. . . .

* * * * *

Danielson: Apropos of the debate as to specificity as to time, I should like to point out that although this is not a criminal prosecution there is ample precedent in our Federal criminal procedural laws to establish that the only point, the only necessity for establishing a date in an indictment, which this is analagous to, is to bring the activity complained of within the period of the statute of limitations. Here since the pleadings would indicate that on June 17, 1972 and prior thereto, but obviously in its context, within the period of time that Richard Nixon has served as the President of the United States, and, therefore, clearly within the period of limitations for this proceeding, these events did take place, and the policies were established.

. . . . I would like to point out that this document, a bill of particulars, is not an indictment, and criminal law, the precedents do not control. They are valuable as an analogy, but this need not be as specific as an indictment in a criminal case.

Moreover, the added information which counsel for the President may want in the nature of time, and in the nature of dates, places, particulars on facts, can be reached by him in the event this goes to trial in the Senate through his bringing a motion for a bill of particulars, or a motion to make more definite and certain, and it is not an attack upon the validity of this proposed Article of Impeachment.

Sandman: Now, you have made a point that this is not necessarily the same as a criminal indictment.

Danielson: That is correct.

Sandman: All right now, even if we were to agree on that point, which I do not altogether, but let us assume we do, does the President have any rights pertaining to due process?

Danielson: No, he does not.

Sandman: As would a common criminal in an indictment?

Danielson: He does not have any less right, and as a matter of fact, in this proceeding he has enjoyed much greater rights.

Sandman: All right, so he is entitled to due process?

Danielson: This is my time, Mr. Sandman. I will point out that the President has been present and participated in these proceedings since the very first hour that we have met.

His counsel has been permitted to introduce evidence and to examine witnesses. He has a complete copy of every document that pends before this Committee. Due process has not merely been observed here, it has been exalted, and I applaud it, but the President and no one else has ever had opportunity to be informed such as have been provided to him in this procedure.

FRIDAY, JULY 26, 1974

SECOND SESSION

Mañaziti: Now, I have done some legal research during the noon recess because it was represented that the law that pertains to indictments does not necessarily apply to impeachment proceedings. And I found that from the very beginning, when impeachment proceedings were instituted in 1798, right down to the present time, the last impeachment, of Judge Ritter in 1936, that every respondent charged has been faced with articles of impeachment that alleged specifics, and there is a reason for it. There is a reason for it. So that he who is charged, and this is fundamental to Anglo-Saxon law, that he who is charged must know on what particular charge or points he must defend himself. It is not necessary for him to go over the tremendous amounts of information that we have here and say, well, maybe they will accuse me on this and maybe on that. And it is very simple, Mr. Chairman, because the gentleman from Maryland began to specify certain times, places and events.

Now, if that is it, if that is what the charge is, simply include it in the Articles of Impeachment.

Just to take an example, on the point one of the — Paragraph 1 of the article, making false or misleading state-

ments. All right. What statements? When were they made? And where were they made? That is simple because if we are going to know about it when it goes to the House of Representatives, we ought to know about it now.

To lawfully authorize investigative officers. What officers? One, two, three. When? And where? What is so difficult about that?

Number 5, approving, condoning and acquiescing in payment of substantial sums of money. All right. How much money are we talking about?

The amount. The purpose for which the money was given. To whom was it given? How many persons are involved?

Number 6, endeavoring to misuse the Central Intelligence Agency. That is a very broad general statement and it may be true. I am not denying it. I am not affirming it either. Endeavoring to misuse the CIA. We ought to know how, when, where did this occur.

Disseminating information received from officers. What officers of the Department of Justice? And that can be characterized throughout the entire part of this article.

Number 8, making false —

Chairman: The time of the gentleman has expired.

* * * * *

Sarbanes: Behind each of those allegations lies an extensive pattern of conduct. That will be spelled out factually and will be —

Sandman: That is —

Sarbanes: If the gentleman will let me finish, I am endeavoring as best I can to respond to his question.

Sandman: All right. Go ahead.

Sarbanes: And that pattern of conduct will be spelled out in the report that accompanies the articles. But there is not one isolated incident that rests behind each of these allegations. There is a course of conduct extending over a period of time involving a great number of —

Sandman: I am not going to yield any further. It is my time you are using up. I am not going to yield any further for that kind of an answer. You are entitled to your proof. No one said that you aren't. You are entitled to as many articles as you can get the Democrats and some Republicans to agree upon. And no one says that you are not entitled to that. But to each of these, my friend, the law from the beginning of this country up to the last impeachment in 1936 says, whether you like it or not, it has to be specific and this is not specific.

Chairman: The Chair would like to address a question to

counsel and staff which has had the whole matter before it for a period of time, citing the precedents and the history of impeachment, as to whether or not there is a requirement that there be specificity in the preparation of Articles for Impeachment? I address that to our counsel.

Doar: Mr. Chairman, in my judgment it is not necessary to be totally specific, and I think this Article of Impeachment meets the test of specificity. As the Congressman from Maryland said, there will be a report submitted to the Congress with respect to this article, if the Committee chooses to vote this article, and behind that report will be the summary of information, as well as all of the material that was presented to this Committee.

Prior to trial in the Senate, the counsel for the President is entitled to make demands for specificity through perhaps a motion similar to a bill of particulars, and so that all of those details may be spelled out.

But, from the standpoint of this article, my judgment is firmly and with conviction that this meets the tests that have been established under the procedures.

Garrison: Mr. Chairman, I have not frankly spent a great deal of time researching this question. But, I would say that while it may very well not be a requirement of the law, it clearly can be said to be the uniform practice of the past to have a considerable degree of specificity in the articles, and I would cite the members of the Committee to a publication of this Committee of October of 1973 entitled Impeachment, Selected Materials, and beginning on page 125 and concluding on page 202.

Every Article of Impeachment which has been tried in the Senate is set forth, and I would be less than frank, Mr. Chairman, if I did not suggest that a simple reading of those articles would suggest an enormous amount of factual detail. As a matter of fact, to an extent that is actually not included in indictments. And they are not only times, dates and places named, sometimes there are the sums of money that allegedly have been misappropriated.

* * * * *

Butler: I share the concern raised by the gentleman from New Jersey, Mr. Sandman, and I would like, if I may, to return to our question of Mr. Jenner, if you could answer a few more questions for me...my question is this: based on your view of the precedents, and your experience, is the President entitled to know at some point prior to trial just exactly what facts will be educed against him?

Jenner: I think in an impeachment proceeding that he is so entitled.

Butler: Now, how would counsel for the President go about getting that information if it were not spelled out specifically in the Articles of Impeachment?

Jenner: In the proceedings that take place prior to trial he is entitled to ask for and receive virtually without subpoena, without process, but by request, under supervision of the Chief Justice, who will perform the function of the presiding judge, the production of all materials in the possession of this Committee bearing upon the issues presented by the Article of Impeachment. Under the present practice, especially in civil cases, but substantially so also in criminal cases, under the criminal rules, and multidistrict panel manual, counsel are required in criminal cases, subject to the Fifth Amendment, of course, and Fifth Amendment rights, to all of the material that bears upon the issues in the case.

Butler: Let me ask one more question. Is the President also entitled to know sufficiently in advance of the trial the facts that may be educed in order to prepare a defense so it cannot come to him at the last moment?

* * * * *

Jenner: I think he is entitled to that, Congressman Butler. But, he is not entitled to it by way of a specific pleading. He is entitled to know, and he will receive under the present modern practice, the facts, which I assume you mean evidence, all bearing upon the issue stated in the Bill of Impeachment.

Danielson: The points raised by the gentleman from New Jersey, Mr. Sandman, and others along his line, I am fearful have a motivation, perhaps, and intent which we must avoid in this case of impeachment; namely, by specifying some one overt act, following one of the articles, one of the listings of impeachable offenses, we might thereby narrow the area of proof under which the prosecution of this case, the manager in the Senate, would be entitled to produce evidence.

By stating, for example, under the first item of the making of false statements to investigative officers, or whatever that is, if we were to list a specific false statement that may have been made on let us say June 30th, 1972, would we not then in the Senate be limited in our proof, or limiting our proof to evidence which would relate directly to that specific false statement?

... The President is put on notice as to the specific types of impeachable conduct which we allege against him. This is enough to alert him, to give him notice as to what are the charges. And bear in mind that if and when this matter reaches the Senate, it will be accompanied not only by a Committee report, but, of course, by the final Articles of

Impeachment, and he will then, if he desires, have the right to make a motion for a bill of particulars or related motion, the idea being to request a greater specificity in the charges against him . . .

Dennis: No one contends and I do not contend certainly that you have got to plead in an indictment all of the evidence by which you intend to support your specific charge. But, you do have to say, if you are charging the man with making false and misleading statements, you do have to say in that on the 14th day of April, 1973, he did say to Henry Petersen, Assistant Attorney General of the United States, the following, so that he will know. He cannot be required under the Constitution to look back over everything he may have said sometime that somebody is now going to say was false or misleading. You have got to specify to that extent, and there is only one precedent in this particular case, and that is the case of Andrew Johnson. And if you will look at the articles set forth on page 154 of our own publication, you will find that they were exceedingly specific,

Danielson: I wonder if I understood the gentleman correctly in that I understood him to say that if we specify these acts in our accusatory pleading, the evidence to be educed at the trial is restricted to those items?

Dennis: Why of course, and that is the whole purpose, and what you want to do is give a man no chance to know what he must meet, and then you bring in anything you happen to think of, and it is not constitutional, and it is not fair, and just because you are a Congressional Committee you cannot just tear the Constitution up and throw it away. And that is what you want to do here.

* * * * *

Rangel: I wonder as we try to talk about specifics so that the President would be in a better position to defend himself whether we really take into consideration that the mandate of this Committee is to report to the House of Representatives and it seems to me that if we got bogged down with specifics before the House of Representatives has worked its will, that perhaps we would not give the general recommendation to the House that it rightfully deserves. It is not our constitutional responsibility to impeach the President but merely to report to the House. So that it seems to me that we should not be talking about specifics but give the maximum amount of information to the House of Representatives so that they can deal with the problem constitutionally.

* * * * *

Chairman: . . . Impeachment has offered us, except for the case of Andrew Johnson, no guidelines, no precedents. It

is a fact, however, that the rules of evidence do not apply as such. The rules that will be the rules that will apply should this impeachment proceeding move on into the House and then to trial in the Senate, will be the rules that the Senate will adopt. We do know as a matter of fact from impeachment proceedings and the research that has been extensive, and . . . that the House of Representatives has indeed impeached without any articles of impeachment except merely to impeach, and that on a mere motion, a privileged motion of any member of the House, that the House could move to impeach.

So that therefore this discussion and this issue requiring specificity in order to lay the groundwork for articles of impeachment seems to me to be begging of a question which I think has long been settled.

What we do here is to proceed with deliberations concerning the proposition that certain articles of impeachment be recommended by this Committee to the House of Representatives.

Hungate:... And these strict standards of proof, I saw where one of the distinguished Senators said yesterday that some of the discussions we had about rules of evidence, that they had different views. The Senate will decide on the rules of evidence and as I recall the Johnson case they did — they overruled the Supreme Court Justice — wouldn't that be a thrill — so many times that he finally threatened to quit and leave unless they behaved a little better.

So I think ... the doctrine of impeachment... is as strong as the Constitution and it is as broad as the King's imagination and we have that problem now perhaps.

All the technicalities just remind me of a story of the old Missouri lawyer — the fellow was kind of a country fellow and got a case finally in the Supreme Court and he was nervous and he got up there and he was arguing along and one of these judges looked down at him and he said, well, young man, where you come from do they ever talk the doctrine of "que facit per alium, facit per se?"

Well, he said, "Judge, they hardly speak of anything else."

(Laughter)

Let me tell you I think Mr. Haldeman faked it per alium and Mr. Ehrlichman faked it per alium and Mr. — there is lots of evidence. If they don't understand what we are talking about now, the fellow wouldn't know a hawk from a handsaw anyway.

* * * * *

We sit through these hearings day after day. I tell you, if

a guy brought an elephant through that door and one of us said that is an elephant, some of the doubters would say, you know, that is an inference. That could be a mouse with a glandular condition.

Sandman: I am amazed that I have heard some of the arguments I have heard here today. I cannot believe this is the same group that made all of those speeches yesterday and the night before, everyone of them making that Constitution, the Constitution the most valuable thing that was ever made, and it is, and yet, so willing to cast aside the most important provision therein, the one known as due process, that one now for their own convenience they will throw under the rug.

* * * * *

Now, we talk about this going to the Senate. What about the House of Representatives? Are you going to get down there and say fellows, we have got so many stories to tell, here is 40 books that have been put together by Doar and Jenner, you just rehash those, you don't need anything else. Don't pay any attention to the Constitutional law or anything else, just look over these things, and maybe this is the reason why they didn't want any witnesses. Never wanted a witness. Why didn't Dennis get his right to have the big man here, Hunt, the man who had demanded the money? The most important witness never testified before this Committee because this Committee doesn't want witnesses. This Committee doesn't want to be specific. This Committee just wants to rehash tales. That's what this Committee wants, and that I say is a miscarriage of justice.

Now, three quarters at least of all of the charges leveled against this President will not be involved in any Articles of Impeachment presented to this Committee tonight, and every body knows it. And the President is entitled to which ones are left. And every lawyer knows that it is the only fair thing to do, the only fair thing to do. You don't require an adversary to do all kinds of things. What is so wrong about a simple sentence saying what happened, what is so difficult about that? ...

* * * * *

Drinan: Mr. Chairman, the gentleman from New Jersey states that we are unwilling to make the articles specific, and the gentleman from Indiana asks when and what. Let me give you some specifics that the President obviously knows.

On June 20, 1972, John Mitchell said that the Committee to Re-elect had no legal, moral or ethical responsibility for the Watergate break-in. Two days later the President publicly said John Mitchell has accurately stated the facts. On that

same day the President said the White House has had no involvement whatsoever in Watergate.

The very next day, however, the President directed Haldeman to get the CIA to head off the FBI investigation...

Mr. Helms, the head of the CIA, told Mr. Haldeman and Mr. Ehrlichman that there was no involvement of the CIA in the Watergate and the FBI can go forward in Mexico and that we have no interest in that matter.

But, Haldeman said that he feared that the FBI should not do this and Ehrlichman said that the President himself was concerned about the Mexican money and the Florida bank account. This is the President who three days earlier said we have no involvement whatsoever in the Watergate.

And at the end of that meeting on June 23, Ehrlichman advised Walters that Mr. Dean would take over in negotiating with the CIA.

On June 26 Mr. Walters told Mr. Dean that no FBI investigator could compromise any CIA activities.

On June 27, Dean met with Walters once again, and he had the effrontery to ask the CIA to deviate from the basic purpose and to pay bail for the people who were involved in the Watergate, and to pay them salaries. And Mr. Walters said I shall not unless the President orders it. And Dean said that Mr. Ehrlichman has approved of it and Dean went back to Ehrlichman and Ehrlichman said to Dean to push Walters a little harder. And the very next day Mr. Dean summoned Mr. Walters to his White House office, and Dean brought up the five Mexican checks ... and Dean again asked Mr. Walters to have the CIA stop the FBI investigation.

There is no involvement. We have no specifics? ...

* * - * * *

McClory: As the Chairman and the members of the Committee know, I do intend to support an article, perhaps two articles, of impeachment. But, I think that this article which is proposed, the substitute article proposed by the gentleman from Maryland, is very faulty, very poor, and the weakest article which I think the Committee could recommend.

Now, it has been correctly said that the process of impeachment is not a criminal proceeding but a civil one. We know that our counsel has confirmed that by recommending that we should only consider that the rule or the doctrine of evidence that must prevail here is that of clear and convincing proof, not proof beyond a reasonable doubt. But, what we have before us here is an allegation of a conspiracy. Now, it is called a policy and this is the thesis which our counsel, Mr. Doar, has propounded when he took on this partisan posture in the final days of our investigation, and the

thesis is that the President organized and managed the cover-up from the time of the break-in itself or immediately afterward. And, of course, this is the thesis that my colleague from California and from Massachusetts are trying to develop.

And it just does not hold water. It is weak. It is fuzzy and it is contradictory.

The theory just does not exist.

FRIDAY, JULY 26, 1974

THIRD SESSION

Chairman: The gentleman from New Jersey, Mr. Sandman.

Sandman: Mr. Chairman, I have an amendment in the nature of a motion to strike Paragraph 1.

Chairman: The Clerk will read the amendment.

The Clerk: Amendment by Mr. Sandman.

Strike Subparagraph 1 of the Sarbanes Substitute.

Chairman: The gentleman is recognized for five minutes.

Sandman: Mr. Chairman and Members of the Senate and Members of the House, I hope that we have to carry this on through all of these paragraphs, all nine, but it seems as though this is what we have to do to get some kind of a ruling on the law about which there should be no question.

Now, at the outset, of course, my objections to Paragraph one is that it is indefinite, as is the preamble in the first Paragraph. And it is for this reason, it is not a legitimate Article of Impeachment. I may say at the outset, I had wondered, after I had heard the nine witnesses before our Committee on who the prosecutor would use as witness when this measure would ever get to the United States Senate, if it ever got there, and tonight I think I found out they apparently intend to use the gentleman from California, and using him as a witness is going to be about as legal as using the evidence that he is trying to make people believe tonight.

Now, back to this particular item. So much has been said about the parallel that the Special Prosecutor has in his job as compared to what we are doing here in our job. Now, this is an amazing set of circumstances. The Special Prosecutor is looking into exactly the same case but, of course, his is a little different because crime is being charged there, and impeachment on our score.

But, the Special Prosecutor, with a hand full of people and only a fraction of the time that we have consumed, has

been able to produce a theory of the case. The Special Prosecutor, in exactly the same case, has presented exact, precise articles of indictment.

Now, why can we not do the same thing, with 105 employees, of which about half of those are lawyers? Why can we not do the same thing? It would be so easy. Why are we arguing about all of this? Everybody knows it is the only legitimate way to do this. It is a simple way.

Reference to bill of particulars, reference to any other item is not the same as making the original document specific.

* * * * *

You can talk about all of the days and the months that we have been here, and St. Clair has been here, but that changes once you adopt one Article of Impeachment. That is a new ballgame, because then it goes to the House of Representatives to decide whether or not a trial should be held in the Senate.

And you know, I think the House of Representatives is entitled to a little bit of information. I think that it is altogether fitting and proper to tell them specifically what you are going to prove. I do not think they should have to listen to their TV all night, and find out the next chapter of Mr. Waldie's summation. I do not think that is the way this case should be tried.

* * * * *

The Special Prosecutor is working on exactly the same case and, in fact, you want his evidence. You want his tapes. Would this be sufficient for the Special Prosecutor? Would it?

Conyers: Mr. Chairman, I raise in opposition to this motion to strike and I think we have had a good number of hours here on the debate about whether these pleadings are detailed enough. I think we have examined counsel searchingly. We have exchanged our views. I am going to call for the previous question. I think the time ... unless there are other members that feel very strongly about this.

* * * * *

Conyers: I see well, then, I will withhold the previous question but it seems to me that it is about time for us to consider the first vote of these proceedings. I don't know how many hours we are going to have to spend to determine whether or not we are going to observe the notice pleading of the federal rules that have been in existence throughout the country since 1938. Now, if we are going to insist upon drawing an impeachment proceeding based on the last one, from 1868, I think that after we have examined the counsel,

we have established the facts, we made it very, very definite now that there are two views here and I presume there is nothing left to do but for us to vote this out.

Now, might I inquire, Mr. Chairman, is it possible for us to begin to consider setting some kind of time to close debate to vote on these? I understand there are a number of these to strike reaching to some nine of the sections within the Sarbanes Substitute and I am very anxious that we resolve this after we have examined it. We have been examining it for several hours.

I will yield to my friend from New York.

Rangel: I thank the gentleman for yielding because the author of the motion to strike gives me a little problem in that he never directed himself as to whether or not he is saying that the President did not give false and misleading statements. I don't know whether the motion to strike is merely a parliamentary maneuver but if it is a question that the gentleman has as to which authorized officers, employees, of the United States that the President lied to, then we are prepared to tell you the names and the dates of what federal officials the President lied to.

* * * * *

Sandman: Will the gentleman from Michigan yield so I can answer the gentleman from New York?

Conyers: Yes, I will be happy to yield to the gentleman.

Sandman: It is going to be very short really. I objected because I had to object because I have never been permitted under the procedures that we are following to get some kind of a ruling as to what the law is here. I submit and it is undisputed to me and I don't care what anybody else says, the thing here is very clear. It should be specific.

Now, you have all this information that you can give to people. Why can't you at least give simple sentences that are concise.

Conyers: Well, I am not ...

Sandman: And do it right.

Conyers: I am not going to yield any further to the gentleman.

Maraziti: Mr. Chairman ...

Hogan: Mr. Chairman ...

Conyers: Mr. Chairman ...

Chairman: Don...

Donahue: Order, Mr. Chairman.

Chairman: The Committee will be in order, and I believe that it is in order at this time to state that the view of one member does not express what is actually the law or the policy of this Committee, the House of Representatives.

Wiggins: Including the Chairman.

Chairman: I would hope that the members would recognize that the Chair presides and the Chair is attempting to be fair in recognizing each member and at such time as the Chair recognizes those members, I think that those members should speak out. Until then I would hope that we could keep order and we would be true to the trust that we have and I don't mean to lecture in any way but I think that this is serious enough that indulging in parliamentary maneuvers to delay a decision on this very important question only I think serves to tell the people that we are afraid to meet the issue. And I would hope that we do have as we said we have the courage of our convictions. And to the gentleman from New Jersey directly, Mr. Sandman, I would state that while Mr. Doar may not have expressly stated what the policy is in setting forward specifications I don't believe that the gentleman at this time is prepared to state that he is going to say what the Constitution is when the Constitution for so many years has spoken clearly and the precedents have spoken clearly on the matter of what is established policy. And I think that if we get on with the business of the day and ... whereas there have been questions raised as to what the facts are, remain on this side and on the side of the minority who are prepared to speak to the facts. And I think that that is what we ought to be doing.

* * * * *

Dennis: Mr. Chairman, I have some time of my own I think, but I am grateful to my friend from Illinois adding to it. Mr. Chairman, I would suggest that the distance we are in danger of departing from the law and the Constitution and sending into impeachment politics here this evening is possibly illustrated best by some of the rather startling propositions I have heard advanced during the course of the debate from people who I really don't think ordinarily would have advanced them. For instance, it has been suggested in effect that statements in a Committee report can be used to cue an Article of Impeachment. Which is fatally defective because it is too indefinite and vague. At one point in the debate the statement was made that you didn't really need to worry much about the rules of evidence because they didn't apply in a trial before the United States Senate with the Chief Justice presiding.

Then we heard several times in effect that due process of law is outmoded. We are now in the 20th Century. You have got notice pleading.

* * * * *

Whoever commits an action which the law declares to be

punishable or which is deserving of punishment according to the fundamental idea of a penal law and the sound perception of the people shall be punished. If no determinant of penal law is directly applicable to the action it shall be punished according to the law, the basic idea which fits it best.

Doesn't that sound a lot like some of the propositions we have heard advanced around here today and it is good 20th Century law. It is part of the Nazi penal code from Hitler's Germany.

* * * * *

Wiggins: I just want to conclude two points that I did not conclude when I had the time.

The press conference has been criticized as a statement by the President of the United States lying to the American people because he said there was no White House involvement. Now, the only involvement at that time known to the President possibly attributable to the White House was Mr. Hunt. We all understand that Mr. Liddy did not work for the White House and the facts are that Mr. Hunt did not work for the White House either.

Now, I know that there has been some dispute in the evidence as to that, but the weight of the evidence, and if we are going to go by any standard of clear and convincing, the clear and convincing is that he, in fact, worked for the Committee to Re-elect.

I want to pass from that to one final observation which disturbs my friend from Illinois, and unfortunately he is not here, but he contended that Mr. Ehrlichman lied to the Attorney General about the lack of involvement of Mr. Dean and Mr. Haldeman and himself when he reported to the Attorney General in a telephone conversation on the 28th. I have before me exactly what he said to the Attorney General, and he said it in the presence of the President of the United States. This was what Mr. Ehrlichman said.

"Okay now, the President said for me to say this to you. The best information he had, and it is that neither Dean, nor Haldeman, nor Colson nor I, nor anybody in the White House had any prior knowledge of the burglary. He said that he's counting on you to provide him with any information to the contrary, if it turns up, and you just contact him direct.

"Now, as far as the Committee to Re-elect is concerned, he said that serious questions are being raised with regard to Mitchell, and he would likewise want you to communicate to him any evidence or inference from evidence on that subject."

Now, the question is, did he lie to Mr. Kleindienst when he said that? You recall what I testified to just a few mo-

ments ago when the President said that he had cold, flat denials from these people that they were not involved, and that Dean told him as God as his witness he was not involved. That is precisely the information the President related to Mr. Kleindienst, the Attorney General, and I ask you, did the President lie on that occasion? Did he mislead on that occasion? The answer is he did not.

Cohen: I would like to address a question to the gentleman from California about the President's statements to Assistant Attorney General Petersen and ask his opinion as to whether or not, having read all of the transcripts and information presented to this Committee as to whether or not the President was correctly stating the facts when he told Mr. Petersen to stay away from the Ellsberg matter, the break-in, because that was a matter of national security?

Wiggins: I would say absolutely yes, without equivocation, that was indeed, a national security matter, and the overwhelming evidence is that this entire operation had national security overtones.

Mayne: I thank the Chairman for yielding and I want to thank him also for his patience tonight and to assure the Chairman that I am not trying to delay these proceedings but I ask for this time because I am very genuinely concerned whether the person charged here with very serious offenses, who happens to be the President of the United States, is really given adequate and fair notice of the nature of this charge.

It has been stated a number of times in this particular Subparagraph, it is that either personally or through subordinates and agents he has made false and misleading statements to authorized investigative officers and employees of the United States.

Now, Mr. Railsback, my good friend from Illinois, has rattled off a great many instances which he believes would come within this category. And the gentleman from New York, Mr. Rangel, has said such instances are all over the place. But, it seems to me that that is the very point, that the President and his attorneys should not have to look all over the place in preparing their defense. I cannot see how it can be of any possible prejudice to the House of Representatives in an impeachment proceeding to set out fairly and specifically when these instances occurred. If the gentleman from Illinois is correct in his recital, and I believe Mr. Doar indicated that he thought that he was, it would seem to me that no harm could possibly be done by setting those out.

There are, after all, many, many authorized investigative officers. I think that the FBI agents and I believe Mr. Doar

mentioned that there were some FBI agents to whom such statements are alleged to have been made, certainly it would be no great task or unreasonable burden for the staff, in preparing these articles, to set out the names of those agents so that the defendants would not have to sift through every single interview with every agent that took place.

Frøehlich: We told the American people the importance, the awesomeness of this task and how we are under the gun. We can't stop and take the time to write the specifics to everyone's satisfaction ...

But, you are asking the Committee members to really buy a pig in a poke. Many of us have tended to lean toward an Article of Impeachment, and obstruction of justice. We think it needs to be spelled out.

Now, the motion from the gentleman from New Jersey is not dilatory. It is not made to delay. It is made to explain to the American people the specifics behind each one of these Subparagraphs. And, in talking to the gentleman from Alabama, he said we need this, to me earlier this evening, and I think we need it and the American people need it.

Now, the best way to get it is not to spend another day fighting over the next eight Articles or asking staff to explain the next eight Articles, or trying to explain them, shooting from our hip, but it is to take the time and one day or two days after eight months is not going to make the difference. It seems to me we need to take the time to give the staff the opportunity to work with the proposers to detail the specific items behind the charges and then we can sit down and say yes or no.

Latta: Thank you, Mr. Chairman. As a reward for your patience, I shall not take my full five minutes.

I take this time to ask a couple of questions of Mr. Doar. Is it your intention if the article . . . item is not stricken as proposed by Mr. Sandman, is it your intention then to go to the Statements of Information for the details that will have to be spelled out specifically in the charge to the President?

Doar: No, Mr. Latta, it would not be my intention to do that.

Latta: Where will you get the information?

Doar: You would have the statements in a report that would go along with the article to the floor, and in the report you would be keyed to the summary of information that you were furnished last week, and that in turn would also be keyed back to the Statements of Information, but what you would have, as I envision it, you would have a report that was maybe 15, 20 pages long that would summarize these facts, these ultimate facts, and relevant facts, and that would

be keyed if someone wanted further information to the summary of information that was about 150 pages long and had it all keyed to the Statement of Information where you could see the documentary ... the evidence, the testimony, if you needed to see them.

Latta: Where would the President have to go to find out the charges being made against him specifically?

Doar: Well, the President would have the Article or Articles of Impeachment.

Latta: Which would be general.

Doar: Which would be general.

The President would have the report of the Committee. The President would have the summary of information, and the President would have the Statements of Information.

Latta: He would have to go to all of those?

Doar: Well, it isn't a question of reading them all. They would all be keyed so you could get from one to the other very easily. It is not ... it is not a difficult job of getting in and out of this material if you have the proper index.

Latta: So what you are saying, then, you are going to have a report in addition to the Statements of Information.

Doar: Well, there would be a Committee Report. That is my understanding what the Chairman has said.

Latta: And you wouldn't be incorporating all 38 or 39 Statements of Information in that report.

Doar: Oh, no.

Latta: But the President would still have to go to those Statements of Information to get the details of the charges being made against them specifically.

Doar: Not the details of the charges, but if he had ...

Latta: Let's get the specifics.

Doar: The specifics would be in the ... there would be more specifics in the report. If he was ... you could be more specific if you looked at the summary of information that we furnished last week.

Latta: Well, then, the question is how would the President know the charges being made against him if we left this charge, "making false or misleading statements to lawfully authorized investigative officers and employees of the United States."?

Now, will you just outline how he would know what those charges are so he can defend himself against them?

Mr. Chairman, I yield back the balance of my time.

Chairman: The gentleman from Texas, Mr. Brooks, moves the previous question and the question is on the motion to strike Paragraph one of the Sarbanes Substitute. All

those in favor of voting for the motion to strike please say aye.

(Chorus of ayes)

Chairman: All those opposed.

(Chorus of noes)

Chairman: The noes appear to have it.

Sandman: Mr. Chairman, I demand a recorded roll call.

Chairman: The gentleman from New Jersey demands a roll call. The Clerk will call the roll. All those in favor of the motion say aye. All those opposed, no.

The Clerk will call the roll.

The Vote On Section 1

DEMOCRATS

Donohue nay
Brooks nay
Kastenmeier nay
Edwards nay
Hungate nay
Conyers nay
Eilberg nay
Waldie nay
Flowers nay
Mann nay
Sarbanes nay
Seiberling nay
Danielson nay
Drinan nay
Rangel nay
Jordan nay
Thornton nay
Holtzman nay
Owens nay
Mezvinsky nay
Rodino nay

REPUBLICANS

Hutchinson aye
McClory aye
Smith nay
Sandman aye
Railsback nay
Wiggins aye
Dennis aye
Fish nay
Mayne aye
Hogan nay
Butler nay
Cohen nay
Lott aye
Froelich aye
Moorhead aye
Maraziti aye
Latta aye

Chairman: The Clerk will report.

Clerk: 11 members have voted aye, 27 have voted no.

Chairman: And the motion is not agreed to.

(The Committee then recessed.)

SATURDAY, JULY 27, 1974 FIRST SESSION

Chairman: The Committee will come to order.

The Chair wishes to announce that pursuant to the policy

adopted when we considered the rule of procedure for this debate, that it contemplated that there be general debate for a period not to exceed ten hours and that it was understood as agreed policy that the balance of the time for the consideration of amendments to the articles would not consume more than 20 hours.

The Chair wishes to point out that having commenced with the consideration of the articles yesterday for purposes of amendment, 12 hours have already been consumed of that time. However, as the Committee certainly understands, the Committee can extend time for consideration of the articles for purposes of amendment until we have resolved the entire question.

But the Chair would like to state that in the light of some of the motions to strike which are presently before the Chair, the Chair intends to recognize after a motion to strike has been proffered as an amendment to Article 1 and to each paragraph thereafter that after an hour's debate has expired, the Chair is going to entertain a motion to move the question and that the question will then be in order.

Sandman: ... and I shall not object, I would like to say, and I hope that others will agree who took the position I did yesterday, that the argument was exhausted as far as I am concerned yesterday on the Articles of Impeachment along the line that I suggested. A vote has been taken. There are amendments on the desk that have my name on them and I would like to withdraw those because they are aimed at the same point of law that we discussed at great length yesterday.

It is my hope, Mr. Chairman, that we will be able to proceed with Article 1 with the degree of discipline that existed yesterday and last night, no doubt continuing today. There is no way that the outcome of this vote is going to be changed by debate and I, therefore, hope that we can with dispatch cover the Sarbanes Substitute and there will be no objections from me, no amendments from me, nor will there be any motions to strike from me.

Flowers: If I might be recognized for a short minute, knowing of my friend from New Jersey's conservative bent which I share, I would ask if he would be opposed to my borrowing the paper that he has already got at the desk and at all of our desks and adopt for my purposes the same motion to strike that he has proffered to Subsection 1. I would be prepared at the appropriate time to offer to Subparagraph 2.

* * * * *

So I propose, Mr. Chairman, I take this time merely to

point out that it would be my purpose to offer a motion to strike the paragraph, to seek out the information that would support the paragraph from the members or from the counsel.

Danielson: Mr. Chairman, I have an amendment at the desk.

Chairman: The Clerk will read the amendment.

Clerk: Amendment to Article I offered by Mr. Danielson. On page 2, Subsection 4 strike the word "and" in line 3 and strike the semicolon after the words "Special Prosecution Force" in line 4 and add at the end of line 4 the following:

"And Congressional Committees;"

Danielson: ... I have in mind specifically the House Committee on Banking and Currency under the Chairmanship of the Honorable Wright Patman.

You will recall, a couple of days ago, during the early stages of our debate, I quoted at some length from the September 15, 1972, tape transcript of the conversation in the President's Oval Office in which it was apparent that the President, his Chief of Staff, Mr. Haldeman, and Mr. Dean were planning on how they could possibly prevent the House Committee on Banking and Currency from conducting investigations into the whereabouts, the source, the transmission of certain funds that were found in the possession of the people arrested in the Watergate on June 17th.

The plan was rather elaborate. The President first offered to do so himself, and then he suggested that Mr. Ehrlichman, or Mr. Mitchell, or some other person contact and enlist the aid of Gerald Ford, who at that time was the Minority Floor Leader, and various other members of the House of Representatives, to prevail upon Mr. Patman to not, to desist from conducting his investigation.

* * * * *

The fear in the minds of the President, Mr. Haldeman and Mr. Dean while they talked in the Oval Office was that if Wright Patman was able to issue subpoenas and call in the witnesses, he might uncover almost anything. It was a can of worms and they didn't know what might happen if Patman were given a chance to conduct the investigation he wanted.

Their fear was the disclosure of the fact that the \$3200 in new consecutive numbered bills found at the Watergate did in fact come through a Florida bank account, could be traced back to a Minnesota donor and had been laundered in some kind of an operation down in Mexico.

Proceeding on to the Senate Select Committee, we do have testimony from some of the tapes furnished to us by the White House that at various times in the proceedings the

President counseled his aides to, if they did appear, to stone-wall it, to say nothing, to say they could not recall, to take the Fifth Amendment, to do anything, but not let the plan come out.

This, I submit, is a specific example of an effort to obstruct and interfere with the lawful function of that Committee.

And... I refer to our own Committee, the House Committee on the Judiciary. In connection with the cover-up plan, which I submit is still going on, the President has openly and notoriously and knowingly persisted in defying this Committee in its lawful subpoenas and has failed and refused to turn over the documents that we have requested.

I respectfully submit that we should include within Subparagraph 4 Congressional Committees.

Wiggins: Mr. Chairman, I do not oppose the motion of the gentleman from California to include the language. The problem is will the prosecutors in this case be able to prove the charge.

Let me review my recollection of the evidence with respect to whether the President interfered with a Congressional committee. First in the context of the Patman hearings, bearing in mind, ladies and gentlemen, that there was no Patman hearing. What we had was an intention on the part of the Chairman, Mr. Wright Patman, to do something, which he announced publicly, but the members of his Committee, including six Democrats, would not go along with him. He was thwarted, not by the President, but by the members of Congress, who were on his Committee, and that hearing, the Congressional activity never got off the ground.

I am not willing to attribute to the 20 members who voted against the Chairman of the Banking and Currency Committee any corrupt motives and do not regard them as co-conspirators in this case.

Moving next to the Senate Select Committee, the only interference of the President with the conduct of the Senate Select Committee was for a period of time a consideration of the invocation of Executive Privilege with respect to his aides testifying before that Committee. As we all know, shortly thereafter, that policy, which was characterized as stonewalling it, that is the invocation of Executive Privilege, that policy was abandoned by the President, and the policy thereafter that was that all of his aides would go before the Senate Select Committee and testify freely, without claiming privilege and, of course, we know that is, in fact, what occurred.

Railsback: Mr. Chairman, I am opposed to the article by

the gentleman, Mr. Danielson, from California. Anybody that had any knowledge I believe of the possible motivations at that particular time of the Patman Committee, I think would have ... who was on the receiving end of a possible investigation to be conducted by Wright Patman, probably would have had good reason to try to avoid what they believed very easily could have been a political fishing expedition and I think it is very significant that the members of his own committee decided not to go along with the Chairman in conducting that kind of an investigation which I think many of them believe was going to be a political fishing expedition. In respect to Executive Privilege, I agree with the comments made by the gentleman from California, Mr. Wiggins, and as far as refusing to comply with our subpoenas, it is my own belief that that failure should not constitute an independent or separate either article or item in an article of impeachment.

I think the President probably had a right to assert Executive Privilege even though I am convinced that if it had been taken to court, the court would have ruled against the President.

Chairman: The question is on the amendment offered by the gentleman from California. All those in favor of the amendment, please signify by saying aye.

(Chorus of eyes)

All those opposed.

(Chorus of noes)

Railsback: Can we have a record vote? Mr. Chairman, can we have a record vote, please?

Chairman: A record vote is demanded and the Clerk will call the roll. All those in favor of the amendment, please signify by saying aye. All those opposed no, and the Clerk will call the roll.

The Vote On An Amendment To Section 4

DEMOCRATS

Donohue aye
Brooks aye
Kastenmeier aye
Edwards aye
Hungate aye
Conyers aye
Eilberg aye
Waldie aye
Flowers nay
Mann aye
Sarbanes aye

REPUBLICANS

Hutchinson nay
McClory aye
Smith aye
Sandman nay
Railsback nay
Wiggins aye
Dennis aye
Fish nay
Mayne nay
Hogan nay
Butler nay

DEMOCRATS

Seiberling aye
Danielson aye
Drinan aye
Rangel aye
Jordan aye
Thornton aye
Holtzman aye
Owens aye
Mezvinsky aye
Rodino aye

REPUBLICANS

Cohen nay
Lott nay
Froelich nay
Moorhead nay
Maraziti nay
Latta nay

Chairman: The Clerk will report.

Clerk: 24 members have voted aye, 14 have voted no.

Chairman: And the amendment is agreed to.

Railsback: Mr. Chairman, I have an amendment at the desk which I would like read.

Chairman: The Clerk will read the amendment.

Clerk: Amendment by Mr. Railsback. "On page 1, beginning at line 11, after the word 'intelligence' strike all that follows through line 17 and insert in lieu thereof the following new language, 'subsequent thereto, Richard M. Nixon, using the powers of his high office, engaged, personally and through his subordinates and agents, in a course of conduct or plan designed to delay, impede, and obstruct the investigation of such unlawful entry; to cover up, conceal, and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.' "

Railsback: This language replaces the following language:

"Subsequent thereto, Richard M. Nixon, using the powers of his high office, made it his policy, and in furtherance of such policy did act directly and personally and through his close subordinates and agents, to delay, impede, and obstruct the investigation of such illegal entry; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities."

Mr. Chairman and members of the Committee, I have a great deal of difficulty believing that Richard M. Nixon, at a particular point in time, contrived any kind of a policy, or at least any kind of a policy that would continue to follow through, and I think the word "policy" gives the impression of an affirmative, orchestrated, declarative decision that occurred at a given point in time.

I thought that some of Mr. Wiggins' objections yesterday were very well made. I think what the record reflects, however, is a course of conduct or, in the alternative, a plan of action over many months which was responsive to and de-

veloped as a consequence of events that occurred, and that is the reason for my amendment.

It seems to me that we are going to be asked to prove the charges that we make and it seems to me that we would have a great deal of difficulty proving that the President had any kind of a policy that we could pinpoint as of June 23 or July 6 or August 29, but rather, that many of the things that he did were in response to certain events that occurred.

Brooks: Mr. Chairman, I speak in favor of the amendment. I think that basically it reflects the attitude of this Committee by doing a fair and reasonable job of drawing this language. It is not a pleasant chore to impeach a President. Certainly we want to do it in the most legal and reasonable manner.

I think that this language is perfectly adequate to explain the factual situation at that time. I think that it eliminates some difficulties in the minds of some Republicans about policy. I think the course of conduct or plan is quite adequate to indicate the fact situation and I would commend Mr. Seiberling for his genius in originally working on some of this language, and Mr. Railsback in implementing it, putting it together, and I would hope that we could adopt it without tremendous delay.

* * * * *

Dennis: ... does the gentleman think that his change gets us further away from the conspiracy theory or nearer to it?

Railsback: Well, I am not going to ... I really would prefer not to express my legal opinion on that. I think that ...

Dennis: I would be real interested in your legal opinion on that.

Railsback: Well, I will say to the gentleman, what the amendment does is express my belief that there were certain events which occurred which, for one reason or another, the President did not see ... did not either see fit to respond to or in some events responded to in what I believe to be an improper way.

I do not think that they were necessarily orchestrated. If there ever was a time when ... if there ever was a time when the President perhaps came close to a policy, it would have been that time, in my opinion, after March 21 when all the ...

Dennis: Let me ask the question ...

Railsback: ... events were divulged to him.

* * * * *

Railsback: My thrust I guess is to get away from the language of "policy" and I think I have answered your question as far as my own beliefs about where I am putting criminal responsibility.

I do not think I can answer it any more clearly. I do not believe, and impute any kind of imputation of criminal responsibility, and I think that the President should be charged with direct acts or knowledge. I think there has to be some kind of Presidential knowledge or involvement. I just happen to think there is.

Wiggins: I understand. You mean what you said.

Well, I am running out of time. I want to clear up the question, however, of the conduct of his aides. In order to have this be the President's acts, you would require, I am sure, that at least he had knowledge of the acts of his aides, or that he instructed them with the requisite corrupt intent to obstruct justice, would you not?

Railsback: I would answer the gentleman by saying that the language still speaks for itself. But, it is my belief that to hold Richard Nixon to account and to remove him from office it must be proven that he has committed a serious offense, serious enough for which he should be removed from office.

Now, if he directed something, or if he participated in something, or if he was involved in something that was clearly illicit, if he falsely misled the American people, or if he obstructed justice, or impeded justice, or interfered with the due administration of justice, or if he abused the power such as of the sensitive agencies of the IRS, well then I think that is what he is going to be held to account for.

Wiggins: All right. Fine. I appreciate the gentleman's explanation and I support the gentleman's amendment as explained.

* * * * *

Chairman: The question is on the amendment offered by the gentleman from Illinois.

All those in favor of the amendment, signify by saying aye.

(Chorus of ayes)

Chairman: All those opposed?

(Chorus of noes)

Chairman: The ayes appear to have it. The ayes have it and the amendment is agreed to.

Railsback: Mr. Chairman, I have a conforming amendment if I can find it. Can it be read?

Chairman. The Clerk will read the amendment.

Clerk: On page 1, line 18 on the Sarbanes Substitute beginning at the third paragraph, strike out the following: "The means used to implement this policy have included one or more of the following:" and insert in lieu thereof the following new language: "The means used to implement this

course of conduct or plan included one or more of the following:"

Chairman: The gentleman is recognized for five minutes.

Railsback: Mr. Chairman, I think the language speaks for itself and I am not going to belabor it.

Chairman: The question is on the amendment offered by the gentleman.

All those in favor please say aye.

(Chorus of ayes)

Chairman: All those opposed?

(Chorus of noes)

Chairman: The ayes have it and the amendment is agreed to.

I recognize the gentleman from Alabama, Mr. Flowers.

Flowers: Thank you, Mr. Chairman. I have an amendment at the Clerk's desk.

Chairman: The Clerk will read the amendment.

Clerk: Strike Paragraph 2 of the Sarbanes Substitute.

Flowers: Mr. Chairman, I offer this amendment having no fear that I will be unable to explain what it means to any of my colleagues on the panel, and hoping that they fully understand what it means, and I am certain they do. And I offer it not in any dilatory manner, but as a device to elicit from members of the panel or staff specifics of what charges, what information, what evidence do we have that would come under Paragraph 2...

So, I make this motion to strike and I ask staff, Mr. Doar, or any member of the Committee. I am prepared to yield to them if they can provide me with the evidence to support this allegation in Subparagraph 2.

Wiggins: In all due respect, it should be the gentleman that has in his mind now the evidence. He should not be seeking it from staff. We are about ready to vote, and you have indicated apparently a tendency to vote on what you have in your mind. Tell us what you are thinking about to justify this charge. Do not refer to staff. They do not have to vote.

Flowers: I would remind the gentleman that I made a motion to strike the Subparagraph, not in support of the Subparagraph, and I yield to the gentleman from Maine.

Cohen: I thank the gentleman for yielding, and want to commend him for making this motion, as I will commend Mr. Sandman for making a similar motion last evening.

I happen to share the beliefs that fundamental fairness requires that we articulate the operative facts upon which the House intends to rely on if and when it votes to take this matter to the Senate for trial.

Chairman: Mr. Sandman is recognized.

Sandman: Thank you, Mr. Chairman. I shall not use but seconds, and may I say to my friend from Alabama, if you were to stand on your head and do the fanciest of tricks, you would have twelve votes, no more. And there is no point in the continuation of this kind of an argument. I agree with you with all my heart, but you are going to have a far better forum on another day over in the House where we both sit.

So, please, let us not bore the American public with a rehashing of what we have heard. We went through this for many hours yesterday, and to those who favor keeping the Sarbanes Substitute as it is, you've got 27 votes. Let's go on with our business.

Chairman: I recognize the gentleman from Maryland.

Hogan: Mr. Chairman, it seems that my good friend from New Jersey, Mr. Sandman, is carrying water on both shoulders, and I say this kindly. He subjected all of us yesterday to belabored arguments about the necessity for specificity. Now, he convinced a number of us that he is right. We should have specificity. So, what we are involved in now is not an effort to embellish.... We are trying to be responsible and specifically support every item in the Articles of Impeachment, with not supposition, not rumor, but specific facts to support those charges.

* * * * *

Sandman: Well, I am certainly not carrying water on both shoulders. What you are doing today is not any more definitive today than it was yesterday because you are not adding one blessed word of clarification to the Articles of Impeachment. All you are doing is rehashing the same narrative that the public was exposed to yesterday for a dozen hours and this is what I think we should say.

Maraziti: Let me say that Mr. Sandman has stated the position that I had intended to state, that the specific point is this, that what we have asked for and what he has asked for is including the allegations in the Articles of Impeachment.

... I am not talking about facts or evidence. I am talking about allegations that ought to be included in the Articles of Impeachment...

Hogan: I would say to my friend from New Jersey that he is...

Railsback: Mr. Chairman...

Hogan: ...that he is free to offer amendments to the Sarbanes Substitute or to the Donohue resolution, inserting in the kind of specificity, to use a much worn word, that he desires.

* * * * *

Eilberg: Mr. Chairman, I have listened with great interest to the statements of the gentleman that were just made and he talks again repeatedly about the lack of direct evidence, talks about circumstantial evidence and how vague it is, and I would like to place in the record at this point some of the cases of direct evidence. . . .

Specifically on June 20th the President had a conversation with Mitchell. The President made a dictabelt of this conversation. This dictabelt with the President's recollection shows that the President knew that CRP had a relationship with the burglary. Mitchell apologized for not supervising his men because the matter had not been handled properly.

On June 20th Mitchell issued a false press release denying any CRP involvement. The President because of his conversation with Mitchell, had to know this to be false. Notwithstanding this fact, the President made a statement to the press which told the public that what John N. Mitchell had said was true. This is direct evidence of the President's active participation and leadership.

On June 30th the President, Mitchell and Haldeman had a conversation about why it made sense for Mitchell to resign. This conversation discloses that both Haldeman and the President believed that more things might surface in the Watergate and now was the time for Mitchell to leave before they did.... On August 29, the President made a false press release about the fact that both John Dean and Clark MacGregor were making investigations, Dean at the White House and MacGregor at the CRP. No investigation had in fact been made of either organization.

On September 15 the President sent for John Dean and told him he had done a good job and gave him directions as to how to stop the Patman Committee from being effective.

I could go on, Mr. Chairman, but these are just some of the cases where the President had direct knowledge, participation and direction.

Danielson: Mr. Chairman, I oppose the motion to strike.

Wiggins: The motion on the table is to strike the language of the Sarbanes Substitute in Subparagraph 2. That Subparagraph is directed to the withholding of information by the President and I shall direct my remarks to that Subparagraph only.

At the outset, Mr. Chairman, let's reflect what happened just a few moments ago. I think that we have pinned down absolutely that we are talking about Presidential misconduct and not the knowledge, the acts of others unless they were known to the President.

Much of the material recited us in support of Subpara-

graph 2 are not the acts of the President at all but, rather, the acts of others. And I am willing to concede that there are plenty of misdeeds by others, but unless we attribute them to the President by the evidence, they are not relevant to this case.

... On September 15, John Dean was up to his elbows in money payments. We all know that to be a fact. Did he disclose anything about that to the President insofar as our evidence is concerned on the conversation of September 15? Did he give the President any information at that time upon which the President could act? And the answer is no.

What about February 28? John Dean is deeply involved in a criminal conspiracy to obstruct justice, according to John Dean, but what did he tell the President, speaking of withholding, on the 28th day of February? Absolutely nothing.

What about the 13th day of March now, the next conversation with Dean? Well, there is one on the 7th too. I will not march through these but just simply emphasize that there was some withholding here, withholding by John Dean of information in his possession from the President upon which the President might have acted had that information been conveyed to him.

* * * * *

Waldie: Mr. Chairman, I move the previous question.

Chairman: The question is on the motion, the amendment of the motion offered by the gentleman from Alabama to strike.

All those in favor please say aye.

(Chorus of ayes)

Chairman: All those opposed?

(Chorus of noes)

Chairman: The noes appear to have it, and the noes have it and the amendment is not agreed to.

SATURDAY, JULY 27, 1974

SECOND SESSION

Chairman: The Committee will come to order and I recognize the gentleman from Alabama, Mr. Flowers.

Flowers: Thank you, Mr. Chairman, and I have an amendment at the clerk's desk.

Chairman: The clerk will read the amendment.

Clerk: Amendment by Mr. Flowers. Strike Subparagraph 3 of the Sarbanes Substitute.

Butler: Mr. Chairman, specifically, we are concerned at the moment with Subparagraph 3. You will recall that the article 1 is directed to a course of conduct or plan by the President designed to obstruct justice ...

* * * * *

Butler: Specifically, on March 21, 1973 the President instructed Dean and Haldeman to lie about the arrangements for payments to the defendants. And in this regard, I call your attention to page 119 of our transcript. I think we have probably been over this some little time before, but it is relevant to this particular point dealing with the Cuban Committee.

"President: As far as what happened up to this time, our cover there is just going to be, the Cuban Committee did this for them up to the election.

"Dean: Well, yeah. We can put that together. That isn't, of course, quite the way it happened, but, uh ...

"President: I know, but it's the way it's going to have to happen.

"Dean: It's going to have to happen (laughs)."

And I direct your attention also to page 120 of the transcript which follows specifically on March 21st, also the President told Haldeman and Dean "President: That's right. That's right.

"Haldeman: You can say you forgot, too, can't you?

"Dean: Sure.

"President: That's right.

"Dean: But you can't ... your ... very high risk in perjury situation."

* * * * *

Wiggins: We have started from an understanding of what the language is before us to be stricken, and I want to read the operative words, at least.

These are charges against the President, mind you, approving, condoning, acquiescing in and counseling witnesses with respect to the giving of false or misleading statements to lawfully authorized investigative officers, and so forth, including congressional proceedings.

Note, if you will, that the language is couched in terms of giving false testimony in the future. That is an important thing to remember because the perjury of Magruder and Porter occurred prior to March 17, well prior to March 17, and the President did not learn about it until March 17, and so I ask the obvious question, can you counsel the giving of perjured testimony after it is already done?

Well, the answer to that is no. The President is just learning about it on the 17th, and a fair reading of the conversation between the President and John Dean on that occasion, my recollection is it is the 13th rather than the 17th, but on that occasion is that the President is learning about prior perjury as distinguished from counseling future perjury, which is the essence of the allegation before us.

* * * * *

I only wish to make one point because it has been discussed elsewhere, and that is Mr. Haldeman had the opportunity to review tapes prior to his testimony. At that time Mr. Haldeman and the President but very few others were aware of this taping system. Mr. Haldeman reviewed these tapes. The implication is being placed in the minds of the Committee that this was again part and parcel of a corrupt design so that Haldeman could tailor his testimony falsely before a grand jury.

Now, that is a suspicion alone, but let me tell you that there is another side that I think is equally defensible and that is that Mr. Haldeman reviewed that tape so as to testify truthfully to the events thereon rather than falsely. I think that is an eminently reasonable conclusion, inconsistent with the suspicious circumstance, and the President is entitled to the more favorable construction of that event.

* * * * *

Chairman: The question is on the motion of the gentleman from Alabama. All those in favor of the motion please signify by saying aye. All those opposed, no, and the ...

(Chorus of ayes)

(Chorus of noes)

Chairman: All those in favor of the motion, please signify by saying aye.

(Chorus of ayes)

All those opposed.

(Chorus of noes)

The noes appear to have it.

Sandman: I demand a tally of the vote.

Chairman: The gentleman from New Jersey demands a roll call vote. The Clerk will call the role. All those in favor of the motion please signify by saying aye. All those opposed, no.

The Vote On Section 2

DEMOCRATS

Donohue nay
 Brooks nay
 Kastenmeier nay
 Edwards nay
 Hungate nay
 Conyers nay
 Eilberg nay
 Waldie nay
 Flowers present
 Mann nay
 Sarbanes nay
 Seiberling nay
 Danielson nay
 Drinan nay
 Rangel nay
 Jordan nay
 Thornton nay
 Holtzman nay
 Owens nay
 Mezvinsky nay
 Rodino nay

REPUBLICANS

Hutchinson aye
 McClory aye
 Smith aye
 Sandman aye
 Railsback nay
 Wiggins aye
 Dennis aye
 Fish nay
 Mayne aye
 Hogan nay
 Butler nay
 Cohen nay
 Lott aye
 Froelich aye
 Moorhead aye
 Maraziti aye
 Latta aye

Chairman: The Clerk will report.

Clerk: Twelve members have voted aye, 25 members have voted no, one member has voted present.

Chairman: And the motion is not agreed to.

The gentleman from Alabama.

Flowers: Mr. Chairman, I have an amendment at the desk.

Chairman: The Clerk will read the amendment.

Clerk: Amendment by Mr. Flowers.

Strike Subparagraph 4 of the Sarbanes Substitute.

Hogan: As we know, the paragraph reads "interfering or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation and the Office of Watergate Special Prosecution Force."

Now, perhaps I feel the importance of this more than most because of my former affiliation with the FBI, but the fact that the President and the White House used the FBI and the CIA to thwart the investigation troubles me very deeply because if we do not have confidence in these important sensitive investigative agencies, then the very core of our country is in jeopardy.

* * * * *

Hogan: ... Now, there are other problems I was going to detail but I will not be able to but I do want to call to the attention and recollection of my colleagues the conversation whereby Gray called San Clemente and got Clark MacGregor on the phone and he said to Clark MacGregor that I want to talk with the President about his aides trying to misuse ... these are Gray's words, not ours . . . misuse the CIA and the FBI.

A few minutes later the President called Mr. Gray and did not in any way allude to any conversation he had with Mr. MacGregor or Mr. Gray's concern and congratulated Mr. Gray for doing an outstanding job in the hijacking. Mr. Gray could not contain himself any more, he blurted out, "Mr. President, your aides are trying to destroy you. They are misusing the FBI and CIA." And then Mr. Gray testified there was a perceptible pause and the President said, go on with your aggressive investigation, Pat. He did not even inquire about this involvement of his aides trying to misuse the FBI and the CIA.

* * * * *

Drinan: I want to point out the necessity of retaining this section because it deals with something very fundamental, that by Federal law, any person who influences or seeks to influence or intimidates or impedes any witness in any proceeding, commits a crime.

Let us take the summer of John Dean during that particular year. On June 21st he is assigned to this case and he sits first of all, with Mr. Gray and the FBI people at every single interview when people from the White House go before the FBI. Is Mr. Dean seeking to influence or intimidate or impede? He happens to be the President's counsel. And all of the people who saw Dean there, who knew, recognized that this is most unusual, especially after the President on the very day after Mr. Dean was assigned, said that the White House has had no involvement whatsoever in Watergate and the President's counsel is there, on the phone, day after day, for two long weeks, with Mr. Patrick Gray. Well, Dean and Ehrlichman really could write a book on how to be a double agent of the FBI.

* * * * *

Sandman: The thing that amuses me the most today, what a difference 24 hours makes. Yesterday they had so much testimony they were afraid to put in nine simple sentences. Now today every other word they breathe is the word "specify". Isn't that unusual? So unusual. Everything is so specific. But they have not changed one word in the articles,

have they, not a word. There has got to be a reason for this resistance. There has got to be a reason. You know what the reason is? When you tame it down to a time and a place and an activity, they do not have it. All they have is conjecture. They can tell you all about what Dean told somebody, Ehrlichman told somebody, what somebody else told somebody. This is going to be the most unusual case in the history of man. They are going to prove the whole case against the President of the United States over in the Senate with tapes and not witnesses. Won't that be unusual? And this is what it all amounts to.

Now, if I went through this thing paragraph by paragraph I could cite with great detail no Presidential involvement. They know it, you know it and I know it.

Now, let us get down to a couple of these things, real specifics. Will we ever forget Petersen's answer to my question, the most daring question asked in the whole investigation to the Chief, the Chief of the Criminal Division of the Department of Justice? When I asked Mr. Petersen, did you receive any information whatever from the very beginning up to the present time that involves Presidential wrongdoing, that was a dangerous question and Mr. Petersen's answer was none. That is a pretty solid witness, I would say, for the President.

If you go right down the list of all nine witnesses that came before this Committee, including the great John Dean, you get the same kind of testimony. So witnesses are a lot stronger than this stuff that you are hearing here today. You can take it out of context, you can play up a particular article, you can do as Newsweek did, use only half of a sentence and leave off the five most important words. It is terrible, sure it is, but you and I know as lawyers it is not the kind of evidence that is going to convict anybody.

* * * * *

Wiggins: It is instructive to remember, ladies and gentlemen, that in the form of this article we are talking about Presidential misconduct, Presidential misconduct, and not misconduct of others unless it can be logically and appropriately tied to the President.

I wish to speak rather rapidly to the matter of CIA. There are two Presidential acts within the time frame of June 23 to July 6, and that is the time frame in which it is alleged there has been interference with the CIA.

The first act begins when the President... instructed H. R. Haldeman and John Ehrlichman to insure that the FBI investigation of Watergate did not expose unrelated CIA covert activities or White House special investigative unit activi-

ties, and that the CIA and the FBI should coordinate to that end. That is a Presidential act and it is admitted.

The only other Presidential act occurred on July 6, several weeks later, and this is what the President said after being informed by Pat Gray that his aides are attempting to mortally wound the President. The President said, "Pat, you just continue to conduct your aggressive investigation."

Now, some sinister purpose is imputed because he paused briefly before he said that. But that is what he said.

Now, I want to refresh the recollection of the members as to whether or not the President's concern about CIA was justified under all of the circumstances. We remember that McCord was in fact arrested and a former CIA agent. We remember that Barker was in fact arrested and a former CIA agent, perhaps an active CIA agent. Martinez was arrested and he was an active CIA agent.

Hunt's name was in the *Washington Post*. Hunt was a spy for the United States, a former CIA agent, and a former member of the plumbers unit.

There are other facts which were called to the President's attention on June 23, all of which indicate possible CIA involvement, a theory which was supported by the FBI itself, the FBI itself believed there might be CIA involvement.

Given those facts, ladies and gentlemen, we are asked to conclude that the President corruptly, corruptly, instructed his aides to request that there be coordination between the CIA and the FBI so as not to reveal unrelated CIA covert activities.

Now, ladies and gentlemen, that is all the evidence there is in between the 23rd of June and the 6th of July...I would think that the weight, if not the preponderance, of the evidence in favor of the President is that he acted in the public interest as distinguished from corruptly. Surely, however, there is not a clear and convincing showing that the President acted corruptly given the facts and the knowledge that he had at the time he issued the instruction.

Thank you, Mr. Chairman.

* * * * *

Chairman: The time of the gentleman has expired. All time has expired.

The question now occurs on the motion of the gentleman from Alabama. All those in favor of the motion please say aye.

(Chorus of ayes)

Chairman: All those opposed, no.

(Chorus of noes)

Chairman: The noes have it.

Sandman: Mr. Chairman, I demand a roll call.

Chairman: The gentleman from New Jersey demands a roll call, and the Clerk will call the roll.

All those in favor, signify by saying aye; all those opposed, no.

The Vote On Section 4

DEMOCRATS

Donohue nay
Brooks nay
Kastenmeier nay
Edwards nay
Hungate nay
Conyers nay
Eilberg nay
Waldie nay
Flowers present
Mann nay
Sarbanes nay
Seiberling nay
Danielson nay
Drinan nay
Rangel nay
Jordan nay
Thornton nay
Holtzman nay
Owens nay
Mezvinsky nay
Rodino nay

REPUBLICANS

Hutchinson aye
McClory nay
Smith aye
Sandman aye
Railsback nay
Wiggins aye
Dennis aye
Fish nay
Mayne aye
Hogan nay
Butler nay
Cohen nay
Lott aye
Froelich aye
Moorhead aye
Maraziti aye
Latta aye

Chairman: The Clerk will report.

Clerk: Mr. Chairman, eleven members have voted aye, twenty-six members have voted no, one member voted present.

Chairman: And the motion is not agreed to.

I recognize the gentleman from Alabama.

Flowers: Thank you, Mr. Chairman.

I have an amendment to Subparagraph 7 at the Clerk's desk.

Clerk: Amendment by Mr. Flowers. Strike Subparagraph 7 of the Sarbanes substitutes.

Flowers: Mr. Chairman, there has been no motion filed on subparagraph 5 or 6, because it is my judgment that both of these Subparagraphs have been adequately covered in other evidence presented to the Committee here, and in con-

nection with Subparagraph 7 I would yield to the gentleman from New York, Mr. Rangel.

Rangel: I rise to support this Paragraph number 7 which deals with charging the President with disseminating information received from officers of the Department of Justice of the United States to subjects of the investigations . . . the purpose of aiding and assisting such subjects and in their attempts to avoid criminal liability.

* * * * *

One inference is that the President would want them to lie and conform their story to one that would avoid liability, and one of the members suggested that we should consider the fact that perhaps in this particular instance the President wanted one of his men to tell the truth.

I submit that regardless of which one of these two the President was suggesting, it was violating the secret information which should have remained in the Grand Jury and should never have been shared in the first instance with the President. And the President should never have used this information regardless of for what purpose to share with other people.

This is especially so when he went out of his way to tell Henry Petersen that he was going to keep that information confidential.

... Most of you recall on March 21st when John Dean came to the President to talk about the cancer that was growing in the White House that the President again recalled exactly what he was being told on his dictaphone, and the President knew the people in the White House had started this conspiracy rolling. Of course, at that time it was merely to gather political intelligence. The President had remembered some of the political intelligence because CRP would give it to Haldeman, and Haldeman has discussed it with the President, and we have that on a tape.

Now, just where do you get political intelligence from your opponent? The record is very clear, because the President responds, "Are we bugging Muskie, are we bugging McGovern" and the inference which I draw or "is it just the DNC."

* * * * *

Mayne: Much has been made here of the conversations between the President and Mr. Henry Petersen who was the Assistant Attorney General of the United States on the evening of April 16th. I think that that conversation has to be taken in its proper context, and it is important in considering this to recall the extensive examination of Mr. Petersen when he appeared in person before this committee.

Now, he is one of the relatively few live witnesses which we had. Unfortunately, that was a closed hearing. The Press and the American people were not privy to that at the time. I wish very much that his testimony could have been seen, as well as later read. But, he testified that it was his understanding that under the circumstances it was entirely proper for him to give this information to the President. He testified that in his opinion, it was not Grand Jury information that had already been testified to before the Grand Jury, but had been otherwise developed by the government, and he said that certainly such information could be properly used by the President in his capacity as Chief of State, and that he fully expected the President to do so.

* * * * *

Now, it seems to me that Henry Petersen is certainly one person who has come unscathed through this ordeal as a very dedicated public servant, a professional of the highest standards, and that his testimony should be given a great deal of weight.

He further testified that it is generally the practice within the government for persons accused of wrongdoing to be confronted not only with the charges against them, but also the information on which those charges are based. And for that reason he felt that it was entirely appropriate for the President to transmit that information to Ehrlichman or Haldeman.

Railsback: Mr. Chairman, Members of the Committee, I have spoken to this issue before and I regret the need to have to go back into it. But, I guess this is what we have decided to do today.

... The two preceding speakers forgot to relate a couple of important events. The President of the United States, who was interested in finding out about the involvement of Haldeman and Ehrlichman, his two top aides, had specifically assured Henry Petersen, the new top law enforcement officer investigating the Watergate situation, that he would not divulge any information given to him, and he said it something like this: "You are talking only to me, and there's not going to be anybody else in the White House staff. In other words, I am acting counsel and everything else."

The President then suggested the only exception might be Dick Moore. When Petersen expressed some reservation about information being disclosed to Mr. Moore, the President said "Let's ... better keep it with me then."

At that meeting Petersen supplied the President with a memorandum which he had requested on April 15 summariz-

ing the existing evidence that implicated Haldeman, Ehrlichman and Strachan.

Later that same day, April 16, there was a telephone conversation. Even more specific the President told Mr. Petersen this. He said, he asked Petersen if there were any developments he should know about and he reassured Petersen that "Of course, as you know, anything you tell me, as I think I told you earlier, will not be passed on because I know the rules of the Grand Jury."

Now, it is true that some of the information that was given to the President by Henry Petersen was not strictly Grand Jury information, although as the gentleman, my friend that spoke before me said, that it was in a treacherous area.

Let me just say that what the President did is extremely significant because in examining Henry Petersen myself, and this has not come out, Henry Petersen said in his opinion there wouldn't be anything wrong with relating the charges to the two aides so that they would be apprised and he could get somebody else to take their place.

I specifically asked if he differentiated between the charges and telling them to take some positive course of action: Henry Petersen said "Do you mean tactics?" And here was the conversation.

"Now, in light of this," and I am examining Henry Petersen, "you testified earlier this morning, I think, and frankly I agree with what you said, that it is not improper for you, I don't think it is improper for you to divulge this to the President. What concerns me so much about this is that the President didn't seem to be revealing charges. He is stating information, and possibly even making suggestions to them what they could do." Now I am referring specifically to what the President told two professional criminal defendants on the morning of the 17th. The President told Haldeman that the money issue was critical. "Another thing, if you could get Strachan and yourself to sit down and do some hard thinking about what kind of strategy you are going to have with the money, you know what I mean?" And my recollection is that Mr. Haldeman said "Yeah."...

* * * * *

Chairman: The time of the gentleman has expired.

All time has expired, and the question is now on the motion of the gentleman from Alabama.

All those in favor of the motion please signify by saying aye.

(Chorus of ayes)

Chairman: All those opposed?

(Chorus of noes)

Chairman: The noes have it, the noes appear to have it and . . .

Sandman: On this I demand the yeas and nays.

Chairman: The gentleman from New Jersey demands a roll call vote, and the Clerk will call the roll.

All those in favor of the motion please signify by saying aye, and all those opposed, no.

The Vote On Section 7

DEMOCRATS

Donohue nay
Brooks nay
Kastenmeier nay
Edwards nay
Hungate nay
Conyers nay
Eilberg nay
Waldie nay
Flowers present
Mann nay
Sarbanes nay
Seiberling nay
Danielson nay
Drinan nay
Rangel nay
Jordan nay
Thornton nay
Holtzman nay
Owens nay
Mezvinsky nay
Rodino nay

REPUBLICANS

Hutchinson aye
McClory nay
Smith aye
Sandman aye
Railsback nay
Wiggins aye
Dennis aye
Fish nay
Mayne aye
Hogan nay
Butler nay
Cohen nay
Lott aye
Froelich aye
Moorhead aye
Maraziti aye
Latta aye

Chairman: And the Clerk will report.

Clerk: Mr. Chairman, 11 members have voted aye, 26 members have voted no, one member has voted present.

Chairman: And the motion is not agreed to.

The Chair recognizes the gentleman from Alabama, Mr. Flowers.

Flowers: Thank you, Mr. Chairman. I have an amendment or a motion to offer to Subparagraph 8.

Chairman: The Clerk will report the motion.

Clerk: Amendment by Mr. Flowers. Strike Subparagraph 8 of the Sarbanes Substitute.

Owens: Subparagraph 8 deals with the question of

whether the President made false or misleading public statements for the purpose of deceiving the people of the United States into believing a fair and complete investigation had been conducted with respect to allegations of misconduct on the part of personnel of the Executive Branch of the United States and personnel of the Committee for the Re-election of the President.

* * * * *

On October 5, 1973, the President had a press conference. This was I think two weeks almost to the day of the time that Mr. Cox was fired on a Saturday night, the so-called Saturday Night Massacre... the President is asked this question: "Mr. President, to follow up on the tapes question, earlier you have told us that your reasons are based on principles, separation of powers, Executive Privilege, things of this sort. Can you assure us that the tapes do not reflect unfavorably on your Watergate position, that there is nothing in the tapes that would reflect unfavorably?"

And the President, in front of the American people says this: "There is nothing whatsoever. As a matter of fact, the only time I've listened to the tapes, to certain tapes, and I didn't listen to all of them, of course, was on June 4. There is nothing whatever in the tapes that is inconsistent with the statement that I made on May 22 or of the statement I made to you ladies and gentlemen in answer to several questions, rather searching questions, may I say, and very polite questions two weeks ago for the most part, and finally nothing that differs whatever from the statement that I made on the 15th of August."

I will not try to go into what these tapes have revealed except to say that I think that the Committee, most members of the Committee have commented at one time or another that it is the tapes which have presented the case, the real case, hard case of evidence against the President, which tapes were released within about a month of that time.

Now, I would like to refer back to a Presidential news conference of August 22 in 1973.... In response to a... question in that same press conference the President said that on March 22 he had told Ehrlichman, Haldeman, Mitchell and Dean that "We must get this story out. We must get the truth out, whatever and whoever it is going to hurt."

When the tape finally was released and it became public, in that conversation of March 21 to which the President refers, when that was made public, and we have a recording, and the Committee members have heard that recording and they have heard the President instruct Mr. Dean and Mr. Mitchell and Mr. Haldeman and Mr. Ehrlichman this: "I

don't give an (expletive deleted) what happens. I want you all to stonewall it. Let them plead the Fifth Amendment, cover up or anything else if it will save it, save the plan. That's the whole point." And then later on he says "I don't know but that's a ... you know, up to this point the whole theory has been containment, as you know, John."

Not only is there no such quote as the President quoted himself as giving, but when one reads the transcript there is an exact direction to those four directing to do the exact opposite thing.

Moorhead: I think one thing, and that is that the people of this Committee should realize exactly what is going on here this afternoon, and that is that all day the staff and the members of the majority have refused to give us a detailed complaint to be filed against the President of the United States so that he could tell exactly what he is charged with....

I know Mr. Flowers is doing the thing that he feels is important for him to do in bringing up each one of these motions to strike. But, he obviously is against them or he would vote for them. And then each one of the members of the majority, those wanting to have impeachment, is reading a copy of a paper, prepared I suppose by our million dollar staff.

And I think that, of course, they have a right to express their opinion, but I do think that when we are considering such an important thing as the impeachment of a President that we ought to stick to the evidence that we have, and the very best interpretation of the evidence that we have.

Some of the things that have been stated are just not borne out by the facts. I just received a copy of the recent version that was just given. It was stated first on June 22, 1972, the President publicly adopted as his position, and as factually accurate to the previous statements of Mitchell and Ziegler that the White House had no involvement whatsoever in the Watergate break-in, and that the CRP had no legal, moral or ethical accountability for the break-in. There is absolutely no evidence that the President had any knowledge of the involvement of White House people at the time that he made this statement.

In fact, the evidence is to the contrary. He had been told that there was no involvement.

* * * * *

Waldie: The last public statement the President made on this issue to the nation was April 30 of this year, April 30 of this year, 1974, and he said as he has said in every one of these statements to the people of this nation, tonight I am giving you the definitive story, the real story of Watergate.

Everything you need to know about Watergate is contained, and he pointed... to his 47 volumes of edited transcripts. And he said, though he had made about ten public statements saying we had had the full story, but this is the definitive full story, the edited transcripts which he is releasing to the nation. And he said after you have read these, you need no more information. It is all there.

Now, we ought to examine was he telling the truth to the public on April 30 of this year when he said all the truth of Watergate is contained in these edited transcripts?...

* * * * *

The Committee began examining the edited transcripts and the Committee got ahold of tapes from which those transcripts had been transcribed, and the tapes on our equipment compared to the President's edited transcripts were incredibly more incriminating and in fact produced a great deal more of the story of Watergate, so that the last public statement of the President, April 30, 1974, that this is the full story of Watergate, again has been false and misleading in the extreme because it was misleading in every aspect in those mistaken transcripts, those altered transcripts, misleading in a manner beneficial to the President, intentionally omitted and deleted, intentionally deceptive and misleading.

The allegation "making false or misleading public statements for the purpose of deceiving the people of the United States" is an allegation that has been sustained amply as recently as April 30th of this very year.

Chairman: The time of the gentleman from California has expired. All time has expired and the question now occurs on the motion of the gentleman from Alabama. All those in favor of the motion, please say aye.

(Chorus of ayes)

All those opposed.

(Chorus of noes)

The noes appear to have it.

Sandman: On this I demand the ayes and nays.

Chairman: Call of the roll is demanded and the Clerk will call the roll. All those in favor of the motion please signify by saying aye. All those opposed, no.

The Vote On Section 8

DEMOCRATS

Donohue nay
 Brooks nay
 Kastenmeier nay
 Edwards nay
 Hungate nay
 Conyers nay
 Eilberg nay
 Waldie nay
 Flowers present
 Mann nay
 Sarbanes nay
 Seiberling nay
 Danielson nay
 Drinan nay
 Rangel nay
 Jordan nay
 Thornton nay
 Holtzman nay
 Owens nay
 Mezvinsky nay
 Rodino nay

REPUBLICANS

Hutchinson aye
 McClory aye
 Smith aye
 Sandman aye
 Railsback nay
 Wiggins aye
 Dennis aye
 Fish nay
 Mayne aye
 Hogan nay
 Butler nay
 Cohen nay
 Lott aye
 Froelich aye
 Moorhead aye
 Maraziti aye
 Latta aye

Clerk: Twelve members have voted aye, 25 members have voted no, one member has voted present.

Chairman: And the motion is not agreed to.

I recognize the gentleman from Alabama, Mr. Flowers.

Flowers: Mr. Chairman, I have a motion at the desk.

Chairman: The Clerk will report the motion.

Clerk: Amendment by Mr. Flowers. Strike Subparagraph 9 of the Sarbanes Substitute.

McClory: I hope that this part of Article I will be stricken. I think that this above anything else perhaps demonstrates the contradictory evidence which is presented here and with the supposition that somehow this is easier and convincing proof.

The President in this conversation to which Mr. Hungate referred used the expression "best wishes and gratitude" and that is going to be inferred and then interpreted as clemency. I think the only true subject of clemency was the one with Colson following Mrs. Hunt's death, which is perfectly understandable, when Hunt's wife had been killed and he was suffering from that loss and that ... about to go to jail, the subject of clemency would be discussed with Mr. Colson and in that context, and it seems to me to stretch that into an

Article of Impeachment against the President is completely unsupported whatsoever.

Sandman: Is it not amazing how that magic vote has held so firmly. Even to a point where the gentleman who moved all of these motions to strike did not even support his own motion. Can you imagine such discipline. Uncanny, to say the least. And this is why I suggested when we opened our session today that this would be such a fruitless waste of time and it has been. Two hundred and twenty million people know what you are up to. You did not kid anybody. You tried to sell them a bill of goods. And we did not, with all of our arguments, persuade a single vote. There is no way humanly possible to do that at this forum and this is why I suggested to my colleagues there will be another day, and God help us if we have the right to have another day, and that is going to be on the House floor.

* * * * *

Maraziti: I support the motion of the gentleman from Alabama for a number of reasons.

First, let me say that the ... there are not sufficient allegations for this Committee to know exactly what the charge is. There are not sufficient allegations for the respondent, the President of the United States, to know what the specific charge is.

- A simple reading of the paragraph will indicate exactly what I mean.

"Endeavoring to cause prospective defendants," what prospective defendants? If we know who they are, and we certainly ought to know who they are if they exist after seven months of investigation, why could not the staff or the proponent of the resolution, the Article of Impeachment here have named them?

* * * * *

It goes on to say, "and individuals duly tried and convicted," to expect fair treatment and consideration, and so on.

What favored treatment and consideration?

"In return for their silence or false testimony or rewarding individuals." I can only assume from what I have heard that we are speaking here of possible executive clemency.

* * * * *

Yes, it is true that the President has on a number of occasions discussed this subject as other subjects have been discussed....I think it is very clear that he has rejected, and he rejected clemency on a number of occasions.

All we have got to do is refer to the tape of March 21, 1973, and after discussing clemency, he says very emphati-

cally, no, it is wrong. That is for sure. No, it is wrong, that is for sure.

And then again in the same tape, and the second thing is, "We are not going to be able to deliver on any kind of a clemency thing."

What I submit to you, Members of the Committee, is that certainly members of his staff had made many suggestions to the President. They talk to him. He listens to them. And then he accepts or rejects. In this case, in my opinion he very affirmatively rejected clemency.

* * * * *

Hogan: Jeb Magruder testified that he had in January 1973 told H.R. Haldeman that he would commit perjury in the trial of the United States v. Liddy, which he did. On February 19, 1973, Dean testified that he prepared a talking paper, for a meeting between Haldeman and the President at which Haldeman would discuss with the President an Administration job for Magruder. The paper said that Magruder would be vulnerable if nominated for a position which required Senate confirmation because Sloan was going to testify against him and reveal a number of things.

Now, we tried to subpoena the tape of that conversation between Haldeman and the President and it was refused but we do know that after that meeting between Haldeman and the President, Magruder was offered the highest paying job available in the Government which did not require Senate confirmation. He got a \$36,000 job at the Department of Commerce and he retained that position for even a month after Dean had discussed with the President on March 21, 1973, that Magruder had committed perjury. I submit an individual who was known to have committed perjury was rewarded for perjury.

Owens: That statement that the gentleman read first, "is going to require approximately a million dollars to take care of the jackasses that are in jail, that could be arranged."

Is that the same group in jail that we are assured by the President's counsel the President justified payment of the half million dollars for on the basis of compassion and concern?

Maraziti: Now, in reference to the question propounded by my friend from Maryland, if he has the information, and apparently he has some of it, I would like to ask the gentleman why he has not listed these names ... that is what we are talking about ... in the Articles of Impeachment, the names and the favored treatment, and so on. We want the specifics. The specifics and the allegations.

Now, in reference to the charge that you made (there is) no evidence that the President has offered the job to Magruder, it says Magruder ... says perjured himself. Says ... no evidence the President offered the job to Magruder.

Hungate: I thank the gentleman and it seems we end as we began with a question. And there are different views here and I widely respect them and I think all of those here respect the different views because I think they help the country to develop the truth. Some wise man has written that the truth is seldom pure and never simple. I think we see that here today.

* * * * *

But to close on a most serious note, because this is a solemn responsibility that weighs heavily upon all of us and upon the staff and the American people, we all seek to do the right and proper thing and I hope we can have divine guidance in the difficult decisions we must yet make. And I remember that I can see Omaha Beach, the national cemetery there, the dead of World War II of the United States, and in stone above that monument to those men it says: "They endured all and suffered all, that mankind might know freedom and inherit justice," and I hope our deliberations here will promote that cause.

Thank you.

Chairman: The time of the gentleman from Missouri has expired. All time has expired and the question now occurs on the motion of the gentleman from Alabama. All those in favor of the motion please say aye.

(Chorus of ayes)

All those opposed.

(Chorus of noes)

The noes appear to have it. The gentleman from New Jersey.

Sandman: On that I demand the ayes and nays.

Chairman: The gentleman from New Jersey demands the ayes and nays and a call of the roll is ordered. The Clerk will call the roll. All those in favor of the motion please signify by saying aye. All those opposed, no.

The Vote On Section 9

DEMOCRATS

Donohue nay
Brooks nay
Kastenmeier nay
Edwards nay
Hungate nay
Conyers nay
Eilberg nay
Waldie nay
Flowers aye
Mann nay
Sarbanes nay
Seiberling nay
Danielson nay
Drinan nay
Rangel nay
Jordan nay
Thornton nay
Holtzman nay
Owens nay
Mezvinsky nay
Rodino nay

REPUBLICANS

Hutchinson aye
McClory aye
Smith aye
Sandman aye
Railsback aye
Wiggins aye
Dennis aye
Fish aye
Mayne aye
Hogan nay
Butler nay
Cohen nay
Lott aye
Froelich aye
Moorhead aye
Maraziti aye
Latta aye

Clerk: Fifteen members have voted aye, 23 members have voted no.

Chairman: And the motion is not agreed to.

Brooks: I move the previous question on the Sarbanes Substitute as amended.

Flowers: Mr. Chairman, I ask unanimous consent to proceed for five minutes.

Flowers: Thank you, Mr. Chairman, and thank you, my colleagues on this Committee.

In approaching this grave matter I said long ago that I will be guided by the facts and the Constitution and my own conscience. I honestly believe that I have been faithful to that commitment. I know for certain that I have nothing to gain politically or otherwise from what I must do here but after weeks of searching through the facts and agonizing over the Constitutional requirements it is clear to me what I must do and I emphasize that this is my own personal decision, what I must do. I do not presume to influence any other person and I recognize that there can be differences on this grave matter.

In this regard, Mr. Chairman, let me say just a few words.

There are many people in my district who will disagree with my vote here. Who will say that it hurts them deeply for me to vote for impeachment. I can assure them that I probably have enough pain for them and me. I have close personal friends who strongly support President Nixon. To several of these close friends who somehow I hope will hear and see these proceedings, I say that the only way I could vote for impeachment would be on the realization to me anyway that they, my friends, would do the same thing if they were in my place on this unhappy day and confronted with all of the same facts that I have. And I have to believe that they would or I would not take the position that I do.

Now, Mr. Chairman, I am prepared to vote on this Article of Impeachment but before so doing, I want to address my colleagues on this Committee and particularly my colleagues on this side of the aisle, my Democratic colleagues.

Make no mistake, my friends, one of the effects of our action here will be to reduce the influence and power of the Office of the President. To what extent will be determined only by future action in the House or in the Senate. We have heard some eloquent statements and I honestly believe there has been more sincere thought and soul searching put forward on this terrible proposition than on anything else I have ever been connected with anyway. This is an extremely difficult vote for most of us but let us face it, it is less difficult for some than others. Some have had to reflect on whether they could or would vote to impeach a President of their party, a Democrat, if you will, if the facts justified it. I hope they never have that chance. I hope not one of us ever has to look into another matter of impeachment again. But I suggest to my friends here that they do not have to wait 107 years to vote on the next impeachment to prove responsibility. They will undoubtedly have many instances as time goes on to prove their capacity to make those hard decisions that will have to come before this Congress or the next, and I agree that Congress should.

That is what we are doing here. But we will and should be judged by our willingness to share in the many hard choices that must be made for our nation, such as allocation of scarce resources, such as management of the forces of inflation and recession, such as balancing priorities and controlling the spending of the taxpayers' money.

Fish: I thank the gentleman for yielding and, Mr. Chairman, for this opportunity to address not only the members on this side of the aisle who have labored these last seven months, but also my friends and supporters in New York who are also by and large supporters of the President.

Mr. Chairman, I intend to vote in favor of this, the first Article of Impeachment. This comes after long deliberation, but it comes because an analysis of the evidence in this proceeding has led me to this inescapable conclusion.

I am sure you realize that my vote is not cast lightly. My decision has not been reached hastily. It is reached at all with deep reluctance only after I have been persuaded that the evidence for such a vote is clear, evidence warranting the recommendation by this Committee of this Article of Impeachment to the House of Representatives.

I thank the gentleman.

Chairman: The question is ...the question is before us and, there being no objection, I am going to put the question, and the question occurs on the substitute offered by the gentleman from Maryland, as amended.

All those in favor of the substitute of the gentleman from Maryland as amended, please signify by saying aye.

(Aye)

All those opposed?

(No)

The ayes appear to have it and the call of the roll is demanded and the Clerk will call the roll.

All those who are in favor of the amendment of the gentleman from Maryland, substitute as amended, please signify by saying aye, and all those opposed no.

* * * * *

The question now occurs on Article I of the Donohue resolution as amended by the Sarbanes substitute as amended.

All those in favor please signify by saying aye.

(Aye)

All those opposed, no.

Chairman: Call of the roll is demanded and the clerk will call the roll.

All those in favor signify by saying aye. All those opposed, no.

Chairman Rodino at this point ordered a call of the roll to vote on the Sarbanes amendment to Article I. He then asked for a roll call vote on Article I as amended by Rep. Sarbanes. The two votes were identical.

The Final Vote On Article I

DEMOCRATS

Donohue aye
Brooks aye
Kastenmeier aye
Edwards aye
Hungate aye
Conyers aye
Eilberg aye
Waldie aye
Flowers aye
Mann aye
Sarbanes aye
Seiberling aye
Danielson aye
Drinan aye
Rangel aye
Jordan aye
Thornton aye
Holtzman aye
Owens aye
Mezvinsky aye
Rodino aye

REPUBLICANS

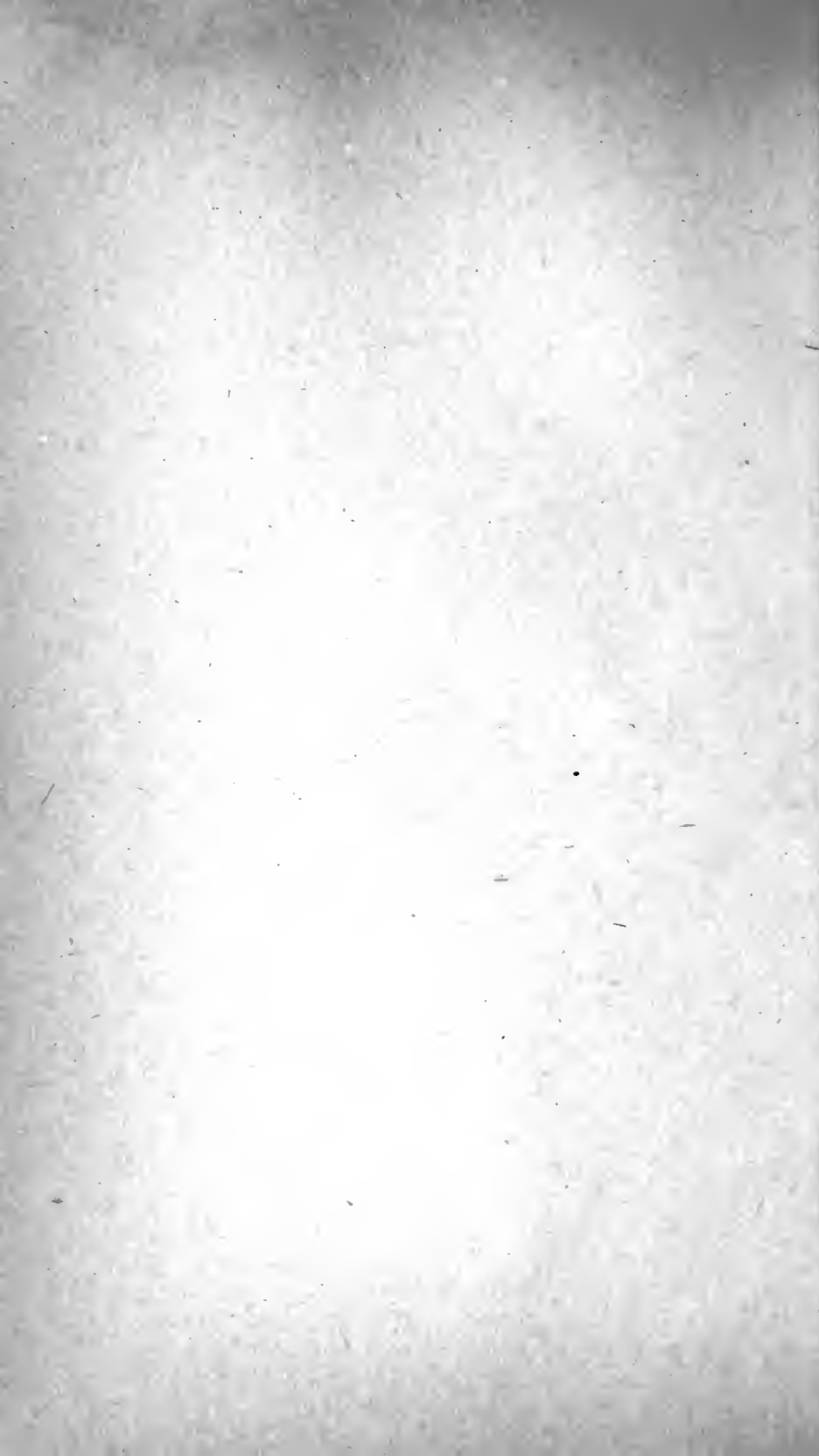
Hutchinson nay
McClory nay
Smith nay
Sandman nay
Railsback aye
Wiggins nay
Dennis nay
Fish aye
Mayne nay
Hogan aye
Butler aye
Cohen aye
Lott nay
Froelich aye
Moorhead nay
Maraziti nay
Latta nay

Chairman: The Clerk will report.

Clerk: Twenty-seven members have voted aye. Eleven members have voted no.

Chairman: And pursuant to the resolution, Article I of that resolution is adopted and will be reported to the House, and the Committee will recess until 10:30 Monday next, Monday morning.

(Whereupon, at 7:05 p.m., the Committee recessed, to reconvene at 10:30 a.m., Monday, July 29, 1974.)



THE SECOND ARTICLE OF IMPEACHMENT



ARTICLE II

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies.

This conduct has included one or more of the following:

(1)

He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

(2)

He misused the Federal Bureau of Investigation, the Secret Service, and other executive personnel, in violation or disregard of the constitutional right of citizens, by directing, or authorizing such agencies or personnel to conduct or con-

tinue electronic surveillance or other investigations for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; he did direct, authorize, or permit the use of information obtained thereby for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; and he did direct the concealment of certain records made by the Federal Bureau of Investigation of electronic surveillance.

(3)

He has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed in part with money derived from campaign contributions to him, which unlawfully utilized the resources of the Central Intelligence Agency, engaged in covert and unlawful activities, and attempted to perjure the constitutional right of an accused to a fair trial.

(4)

He has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know that his close subordinates endeavored to impede and frustrate lawful inquiries by duly constituted executive, judicial, and legislative entities concerning the unlawful entry into the headquarters of the Democratic National Committee, and the cover-up thereof, and concerning other unlawful activities including those relating to the confirmation of Richard Kleindienst as attorney general of the United States, the electronic surveillance of private citizens, the break-in into the office of Dr. Lewis Fielding, and the campaign financing practices of the Committee to Re-elect the President.

(5)

In disregard of the rule of law: he knowingly misused the executive power by interfering with agencies of the executive branch: including the Federal Bureau of Investigation, the Criminal Division and the Office of Watergate Special Prosecution Force of the Department of Justice, and the Central Intelligence Agency, in violation of his duty to take care that the laws be faithfully executed.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law

and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

The Statements of Information and evidence are taken from Judiciary Committee Book VII, which relates the history of White House domestic surveillance activities, and from Book IV of the President's Counsel's Statements on Behalf of the President. Also related to Article II, are excerpts from Book V, dealing with alleged misuse of the Internal Revenue Service.

Statement of Information paragraphs were numbered consecutively by the Committee staff. Those presented here relate directly to possible Presidential knowledge or action, and retain their original numbers.

Statements of Information and Essential Evidence Relating to Article II

BOOK VII: DOMESTIC SURVEILLANCE

The following Statements of Information and related evidence are taken from Book VII of the House Judiciary Committee publications. Book VII, composed of four volumes, outlines the development of a secret White House investigative unit and relates most specifically to Sections 2, 3, 4 and 5 of the Second Article of Impeachment.

1. In early May 1969, following conversations between FBI Director J. Edgar Hoover, Henry Kissinger and Attorney General John Mitchell, the President authorized a specific wiretapping program in an effort to discover the source of leaks of classified government material. Under this program, which remained in effect until February 10, 1971, wiretaps were instituted against thirteen government officials and four newsmen.

President Nixon Statement, May 22, 1973

News accounts appeared in 1969, which were obviously based on leaks—some of them extensive and detailed—by people having access to the more highly classified security materials.

There was no way to carry forward these diplomatic initiatives unless further leaks could be prevented. This required finding the source of the leaks.

In order to do this, a special program of wiretaps was instituted in mid-1969 and terminated in February 1971. Fewer than 20 taps, of varying duration, were involved. They produced important leads that made it possible to tighten the security of highly sensitive materials. I authorized this entire program. Each individual tap was undertaken in accordance with procedures legal at the time and in accord with long-standing precedent.

2. In each of the seventeen cases of wiretapping in the program authorized by the President, the FBI wrote to Attorney General Mitchell requesting written authorization after receiving a directive for a tap. In each of the seventeen cases, the Attorney General authorized the wiretap. Mitchell has denied seeing or signing any such authorizations and denied seeing any summaries of wiretap logs.

3. Although standard Department of Justice procedure required an Attorney General to review national security wiretaps every ninety days in order to reestablish their necessity, Attorney General Mitchell undertook no review of any of the seventeen wiretaps.

4. Unlike other national security wiretaps, the 1969-71 wiretaps were not entered in the FBI indices. The files and logs of the wiretaps were maintained only in the office of Director Hoover or Assistant Director William Sullivan and no copies were made. Such a procedure was requested by Colonel Alexander Haig when the program began.

5. Following the President's authorization of the 1969-71 wiretapping program, wiretaps were placed on the telephones of seven members of the staff of the National Security Council. The wiretaps for the seven specific members of the NSC staff were requested orally by Colonel Alexander Haig, who was then an assistant to the NSC Chairman, Kissinger. A renewed tap on one of these seven was later requested orally by H.R. Haldeman.

6. Five of the wiretaps on NSC employees were discontinued after a relatively short time (the shortest being one month); two continued for an extended period. Three of the staff members were subject to wiretaps for substantial periods after leaving the NSC. Two were tapped when they were no longer employed by the government, but were serving as advisors to a United States Senator who was a Democratic Presidential candidate.

7. In reports sent to the President, Henry Kissinger and H.R. Haldeman, none of the seven NSC employees was established to have been a source of leaked classified information.

8. In the cases of the four newsmen who were tapped, three were ordered by Colonel Haig. Kissinger has testified that the name of one of these three was presented by FBI Director Hoover to the President as a man who had connections with an allied foreign intelligence service and the decision to place a tap resulted from the presentation. The fourth newsman was a national television commentator. He was wiretapped at the direction of Attorney General Mitchell. The Attorney General stated that the President requested that the commentator be placed under immediate electronic surveil-

lance following the review by the President of an FBI report about the individual. Mitchell also requested physical surveillance of the commentator, but withdrew this request after being advised by the FBI of the difficulties involved.

9. According to the FBI, the FBI reports on the wiretaps of the four newsmen showed that none of them had obtained information in a surreptitious or unauthorized manner.

10. Wiretaps were ordered on three White House staff members working in areas unrelated to national security and with no access to National Security Council materials. One wiretap was requested orally of Assistant FBI Director DeLoach by Attorney General Mitchell who represented the order as coming from the President. This tap was specifically denominated as off the record. This White House staff member worked for John Ehrlichman, who received the wiretap reports on him. A wiretap on a second White House staff member was requested orally by Colonel Haig. The third White House staff member was wiretapped at the request of H.R. Haldeman.

11. None of the three White House staff members was ever reported by the FBI to have disclosed classified material. The material compiled on these staff members as a result of the wiretaps related primarily to their personal lives and their politics.

12. Three government employees were tapped in connection with the May 1970 leak of the Cambodian bombing. Two held posts in the State Department at the Ambassadorial level; the third was a high military aide to the Secretary of Defense. All three were tapped at the order of Colonel Haig, who represented that the order for these wiretaps came from the President.

13. None of the three government employees tapped in connection with the Cambodian bombing story was ever reported by the FBI to have disclosed classified material.

14. In June 1969, John Ehrlichman directed John Caulfield to have a wiretap installed on the office telephone in the home of Washington newspaper columnist Joseph Kraft. Ehrlichman has testified that he discussed the proposed wiretap with the President, but that he did not know the wiretap was ever instituted. The wiretap was installed by a former Chief of Security for the Republican National Committee with the aid of a Secret Service employe. It remained in place for one week during which Kraft was not at home. Caulfield has testified that Ehrlichman then told him to cancel the operation. At the same time, Deputy FBI Director William Sullivan was ordered by FBI Director Hoover to travel to a European country and arrange for electronic surveillance of Kraft. A

19-page summary of conversations overheard from a surreptitious listening device in Kraft's hotel room was prepared, which was sent to Ehrlichman.

15. On July 8, 1969 Assistant FBI Director Sullivan reported to Director Hoover that the wiretap on one of the NSC employees produced nothing significant from the standpoint of discovering leaks and recommended that some of the coverage be removed. The tap on that employee was not removed; it remained in place until February 10, 1971, 17 months after the employee resigned as a full-time employee of the NSC and 9 months after he terminated his relationship as an NSC consultant.

Halperin v. Kissinger Complaint, June 14, 1973

25. From May 1969 until September 19, 1969, while plaintiff Morton Halperin was serving as assistant to defendant Kissinger, he and plaintiff Ina Halperin frequently communicated their political and other views privately and frankly in telephone conversations with their close friends. On information and belief these conversations were recorded and summarized in regular reports to the defendants Kissinger, Haig, Haldeman and Ehrlichman, based on the continuous electronic surveillance of plaintiffs' telephone during the period in question.

26. On information and belief, the defendants' illegal interception, disclosure and use of conversations on the private telephone in plaintiffs' residence continued for a period of four to twenty-one months or more, after plaintiff Morton Halperin had left the staff of the National Security Council. During this period plaintiff Morton Halperin, no longer a government employee, frequently communicated by telephone with many persons, including high elected officials, who expressed their views of current government policies. Plaintiff Morton Halperin also wrote many articles for newspapers and journals in this period and communicated by telephone with many individuals in the course of preparing these articles. All these communications were privately expressed but, on information and belief, were intercepted under the direction of defendant Sullivan, and disclosed and used in regular reports to the defendants Kissinger, Haig, Haldeman and Ehrlichman.

27. On information and belief, the defendants' electronic surveillance of the plaintiff Morton Halperin and his family was initiated by the defendants Kissinger, Haig, Ehrlichman, Haldeman and Mitchell in bad faith for the purpose and

effect of monitoring the political ideas and associations of plaintiff Morton Halperin during the period in question.

28. At no time did the plaintiffs, citizens of the United States, have any involvement with a foreign power, its agents or agencies.

Defendants' Answer to Complaint, August 14, 1973

26. The Federal defendants admit that the lawful interception, disclosure and use by the Federal Bureau of Investigation of conversations overheard on the telephone located at the plaintiffs' residences continued from May 12, 1969 until February 10, 1971. The Federal defendants further admit the allegations contained in the second and third sentences of paragraph 26 of the complaint. The Federal defendants further admit the telephone surveillance of the plaintiffs' residences was instituted pursuant to the authorization of defendant Mitchell and was conducted under the supervision of defendant Sullivan and others, and that summaries of the overhears of such surveillance were, during the course of such surveillance, periodically made available to defendants Kissinger, Haig and Haldeman. The Federal defendants deny all allegations contained in paragraph 26 inconsistent herewith.

27. The federal defendants deny the allegations contained in paragraph 27 of the complaint.

28. The federal defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the complaint.

* * * * *

16. Effective July 1969, Anthony Ulasewicz, a retired New York City policeman, was hired as an investigator by John Ehrlichman, Counsel to the President. From that date until mid-1972, under the direction of Caulfield, Ulasewicz conducted numerous investigations for the purpose of obtaining information of possible political value to the Nixon Administration. His salary and expenses were paid by campaign fundraiser Herbert Kalmbach from political contributions held by Kalmbach.

17. On or about November 1, 1969 Attorney General Mitchell requested the FBI's views as to the type of coverage to be used on Joseph Kraft. The Domestic Intelligence Division of the FBI recommended "spot" physical surveillance and a survey to determine the feasibility of a telephone wiretap. Subsequently Director Hoover sent to the Attorney

General a request that the wiretap be authorized. The spot physical surveillance was initiated on or about November 5, 1969, and continued until December 12, 1969, when it was discontinued as unproductive. The Attorney General never signed an approval of the wiretap and therefore, at that time, no wiretap was instituted.

18. In or about January 1970 H.R. Haldeman and John Ehrlichman permitted the information contained in one of the summaries of the 1969-71 wiretaps to be used in connection with political action in opposition to persons critical of the Administration's Vietnam policy.

19. Until May 13, 1970 summaries of "top secret" wiretap material were sent by Director Hoover to the President and to Kissinger. After that date, following a meeting among the President, J. Edgar Hoover and Haldeman, the summaries were sent to Haldeman alone. According to the FBI, there were 37 letters to Kissinger between May 13, 1969 and May 11, 1970; there were 34 letters to the President dated from July 10, 1969 to May 12, 1970; there were 52 letters to Haldeman dated from July 10, 1969 to February 11, 1971; and there were 15 letters to Ehrlichman dated from July 25, 1969 to September 22, 1969.

20. On June 5, 1970 the President, H.R. Haldeman, John Ehrlichman and Presidential Staff Assistant Tom Huston met with FBI Director J. Edgar Hoover, Defense Intelligence Agency Director Donald Bennett, National Security Agency Director Noel Gayler, and Central Intelligence Agency Director Richard Helms. The President discussed the need for better domestic intelligence operations in light of an escalating level of bombings and other acts of domestic violence. He appointed Hoover, General Bennett, Admiral Gayler, and Helms to be an ad hoc committee to study intelligence needs and restraints. He named Hoover as the chairman and Huston as the White House liaison.

21. On June 25, 1970 the Committee completed its report entitled "Special Report Interagency Committee on Intelligence (Ad Hoc)" known as "The Huston Plan." The report included a discussion of the current restraints on intelligence collection with respect to electronic surveillance, mail coverage, surreptitious entry, use of campus informers, use of military undercover agents, and other intelligence-gathering procedures. The Report set forth the arguments for and against maintaining or relaxing existing restraints on the various forms of intelligence collection and of establishing an inter-agency intelligence evaluation committee. Specific options for expanded intelligence operations were set forth for the President's consideration. The Report stated that two of

the proposed intelligence-gathering procedures, surreptitious entry and opening first class mail, were illegal. At Director Hoover's insistence, the report included notations that the FBI objected to proposals for establishing a permanent coordinating committee and for lifting restraints on intelligence collection methods in all categories except legal mail coverage and National Security Agency communications intelligence.

22. During the first week of July 1970 Huston sent the Special Report and a Top Secret memorandum entitled "Operational Restraints on Intelligence Collection" to Haldeman. In the memorandum Huston recommended that the President, from among the options discussed by the Report, select in most areas discussed the option relaxing the restraints on intelligence collection. Huston specifically noted that covert mail covers and surreptitious entries were illegal but nonetheless recommended that the restraints on the use of these techniques be relaxed. Huston justified his recommendation in part on the past practices of the FBI. Huston also recommended the formation of an interagency evaluation committee, as outlined in the Report.

23. On July 14, 1970 H.R. Haldeman sent a Top Secret memorandum to Huston stating that the President had approved Huston's recommendations for relaxing restraints on intelligence collection. Haldeman requested that a formal decision memorandum be prepared. On or about July 23, 1970 Huston prepared and distributed to the members of the Ad Hoc Committee a Top Secret decision memorandum, with copies to the President and Haldeman, advising of the President's decision to relax the restraints on intelligence gathering by use of the techniques of covering international communications facilities, electronic surveillance and penetrations, illegal mail covers, surreptitious entries, and development of campus sources.

H. R. Haldeman Memorandum, July 14, 1970

July 14, 1970

TOP SECRET

Memorandum for: Mr. Huston

Subject: Domestic Intelligence Review.

The recommendations you have proposed as a result of the review have been approved by the President.

He does not, however, want to follow the procedure you outlined on page 4 of your memorandum regarding implementation. He would prefer that the thing simply be put into motion on the basis of this approval.

The formal official memorandum should, of course, be prepared and that should be the device by which to carry it out.

I realize this is contrary to your feeling as to the best way to get this done. If you feel very strongly that this procedure won't work you had better let me know and we'll take another stab at it. Otherwise let's go ahead.

H. R. Haldeman

24. On or before July 27, 1970, Director Hoover met with Attorney General Mitchell, informed Mitchell for the first time of the June 5, 1970 meeting and the July 23, 1970 decision memorandum, and stated Hoover's opposition to the Plan. Mitchell joined with Hoover in opposing the Plan.

25. On either July 27 or July 28, 1970 Huston, on instructions from Haldeman, recalled the decision memorandum of July 23, 1970 and requested that the members of the Ad Hoc Committee return their copies to the White House. Haldeman told Huston that Mitchell had called concerning the Plan, that the memorandum would be reconsidered and that Haldeman, Hoover and the Attorney General would meet to discuss the subject. Mitchell has testified that he informed the President and Haldeman of his opposition to the Plan.

26. In or around August 1970 H.R. Haldeman transferred White House responsibility for matters of domestic intelligence for internal security purposes from Tom Charles Huston to John Dean.

29. On February 10, 1971 in the month before Director Hoover was to appear before a House Subcommittee on Appropriations, the FBI terminated the nine wiretaps from the 1969-71 electronic surveillance program which were still in operation.

31. On June 13, 1971 *The New York Times* published the first installment of excerpts from the *History of U.S. Decision-Making Process on Viet Nam Policy*, popularly known as the "Pentagon Papers." The Pentagon Papers, prepared in 1967 and 1968 at the direction of the Secretary of Defense, were based largely upon CIA and State and Defense Department documents classified "top secret." On June 15, 1971, at the direction of the President, the government instituted legal actions in an unsuccessful attempt to prohibit further publication of Pentagon Papers material by *The New York Times* and by *The Washington Post* which also had gained access to it. On that day, at the request of Attorney General Mitchell, the FBI began an investigation to determine how the newspapers had obtained copies of the Pentagon Papers.

32. Following the June 13, 1971 publication of the "Pentagon Papers," Daniel Ellsberg publicly acknowledged copying and releasing the documents. On June 28, 1971 Ellsberg was indicted in California on charges of unauthorized possession of defense information and conversion of government property, the Pentagon Papers.

33. In the two weeks following the publication of the Pentagon Papers (on June 13, 1971) the President met at various meetings with Haldeman, Ehrlichman, Kissinger and Colson. According to Ehrlichman and Colson the participants at these meetings discussed the adverse effect of the publication of the Pentagon Papers upon national security and foreign policy and considered the possibility that Daniel Ellsberg, identified as the probable source of the published papers, possessed additional sensitive information that he might disclose. During this period, White House staff members were told by Assistant Attorney General in charge of the Internal Security Division that some or all of the Pentagon Papers had been delivered to the Soviet Embassy on June 17, 1971.

34. The President has stated that in the week following the publication of the Pentagon Papers he authorized the creation of a Special Investigations Unit whose principal purpose would be to stop future disclosure of sensitive security matters and that he looked to John Ehrlichman to supervise that unit. This unit became known as the "Plumbers."

35. On June 23, 1971 Haldeman sent several projects to Strachan for implementation. One of the projects envisaged 24-hour-a-day surveillance of Senator Edward Kennedy. Caulfield and Dean objected to this project because of the risks involved and the project was not implemented. Strachan has testified that Dean told him that physical surveillance of Kennedy was in fact conducted on a periodic basis and that Strachan received reports on Kennedy's activities.

36. On June 25, 1971 Colson sent a memorandum to Haldeman in which he analyzed in detail the political ramifications of the publication of the first installments of the Pentagon Papers and government efforts to halt further publication. He considered among other things the political advantages which could accrue to the Administration from the criminal prosecution of Ellsberg.

37. During the last week of June 1971 Haldeman and Ehrlichman directed Colson to recommend a person to be responsible for research about the publication of the Pentagon Papers. One of Colson's several candidates for this position was his friend E. Howard Hunt, a retired career CIA agent.

38. On July 1, 1971 the Internal Security Division of the Justice Department sent a request to the FBI asking whether there was any electronic surveillance involving Daniel Ellsberg. According to the FBI, during the operation of the wiretap program authorized by the President in 1969, Ellsberg had been overheard 15 times on the telephone of Morton Halperin, one of the staff members of the NSC whose telephone was tapped. But no record of this overhearing was maintained in the regular files of the FBI.

39. On July 1, 1971 Colson and Hunt discussed various aspects of the Pentagon Papers matter. This telephone conversation was recorded and transcribed by Colson, and on July 2, 1971 he sent a copy of the transcript to Haldeman with the recommendation that Haldeman meet Hunt.

40. On July 6, 1971 Colson informed Ehrlichman that White House aide and speech writer Patrick J. Buchanan, Haldeman and Ehrlichman's first choice to head White House efforts on the Pentagon Papers matter, strongly believed he was not the man for the job. Colson urged Ehrlichman to meet with Hunt. On July 8, 1971, Buchanan sent a memorandum to Ehrlichman recommending against the project because, while there were dividends to be derived from "Project Ellsberg," none would justify the magnitude of the investigation being considered. Ehrlichman forwarded this memorandum to Haldeman to read and return.

41. Effective July 6, 1971 Hunt was hired as a White House consultant and assigned the task of studying the Pentagon Papers and the origins of American involvement in the Vietnam war. On the following morning, Colson introduced Hunt to Ehrlichman.

42. On July 7, 1971 Ehrlichman called General Robert Cushman, Deputy Director of the CIA, and informed him that Hunt had been asked by the President to perform special consultant work on security problems and that Hunt might be contacting Cushman sometime in the future for some assistance. Ehrlichman told Cushman he should consider Hunt to have pretty much carte blanche. Prior to the discovery of a transcript of Ehrlichman's conversation with Cushman, in February 1974, Ehrlichman testified that he could not recall this phone call, that he was certain the President did not instruct him to secure CIA aid for Hunt, and that it was not until July 24, 1971 that the President gave him special authority to call on the CIA for assistance in connection with the work of the Special Investigations Unit.

Partial Transcript of a Telephone Conversation between Robert Cushman and John Ehrlichman, July 7, 1971

Mr. Ehrlichman: I want to alert you that an old acquaintance, Howard Hunt, has been asked by the President to do some special consultant work on security problems. He may be contacting you sometime in the future for some assistance. I wanted you to know that he was in fact doing some things for the President. He is a long-time acquaintance with the people here. He may want some help on computer runs and other things. You should consider he has a pretty much carte blanche.

(ED NOTE: This transcript was found in CIA files.)

44. Between July 1 and July 11, 1971 Assistant FBI Director William Sullivan told Robert Mardian, Assistant Attorney General for Internal Security, that Sullivan had possession of the files and logs of the 1969-71 wiretaps, and that the taps were not entered in the FBI indices. Mardian has testified that Sullivan indicated to him that the files were extremely sensitive, that Sullivan was likely to be forced out of the FBI by Director Hoover with whom he had disagreed on FBI policy, and that he desired to turn over the logs to Mardian so that Hoover could not use them against the White House. On July 11, 1971, after seeking the advice of Attorney General Mitchell about what to do about the logs and files, Mardian flew to San Clemente, California on a military courier flight to report to the President.

45. On July 12, 1971 Robert Mardian met with the President and John Ehrlichman and related William Sullivan's concerns about the wiretap files and logs. The President directed Mardian to obtain the 1969-71 files and to deliver them to Ehrlichman. Mardian was also directed to verify that the copies of summaries sent to Kissinger and Haldeman were secure.

46. On July 13, 1971 the FBI reported to the Assistant Attorney General, Internal Security Division of the Department of Justice, that a review of the records of the FBI revealed that no conversations of Daniel Ellsberg had been monitored by electronic surveillance devices. On July 16, 1971 the FBI reported there had been no direct electronic surveillance of Morton Halperin.

47. On or about July 17, 1971 Ehrlichman assigned Egil Krogh, a member of Ehrlichman's staff, and David Young, who was then serving on the staff of the National Security Council, as co-chairmen of the Special Investigations Unit.

48. In the week following July 17, 1971 Krogh recruited Gordon Liddy, an ex-FBI agent, for the Special Investiga-

tions Unit, and Colson instructed Hunt to report to that unit. Office space, equipped as a high security area with a special alarm system and a scrambler telephone was made available in the Executive Office Building.

49. During the period from July 1971 to December 1971 Ehrlichman authorized Gordon Liddy to conduct an unspecified number of wiretaps on persons whose names have not been disclosed.

50. Charles Colson's responsibility with respect to the Special Investigations Unit was to disseminate the information obtained by the Unit. In this connection, Colson prepared memoranda to Ehrlichman concerning efforts undertaken to encourage Congress to hold hearings on the Pentagon Papers matter.

51. On July 22, 1971 Howard Hunt met CIA Deputy Director Cushman and asked for CIA aid in connection with an interview Hunt was going to have with an unidentified person. The CIA provided Hunt with, among other things, material for physical disguise and voice alteration, and "alias" identification in the name of "Edward Warren." The material furnished to Hunt was intended to be used by Hunt to interview one Clifton DeMotte who was believed to have information reflecting unfavorably on certain members of the Kennedy political grouping.

52. On July 24, 1971 commencing at 12:36 p.m., the President held a meeting with Ehrlichman and Krogh. The day before *The New York Times* had published a story revealing details of the U.S. negotiating position in the Strategic Arms Limitation (SALT) talks then in progress. At the July 24 meeting there was a discussion of efforts to identify the source of the SALT leak and the use of a polygraph on State Department personnel suspected of being the source of the leak.

53. Following the meeting among the President, Ehrlichman and Krogh the Special Investigations Unit conducted an investigation of the SALT leak, and received the assistance of the CIA in obtaining polygraph equipment and operators.

54. Sometime prior to July 27, 1971 Young asked the Director of Security of the CIA to have a psychological profile of Ellsberg prepared. The project was personally authorized by CIA Director Helms. Young told both Helms and the CIA Director of Security that it was Ehrlichman's wish that the CIA undertake the project. By memorandum dated July 27, 1971 Young and Krogh advised Ehrlichman that preparation of the profile was underway.

55. Hunt sent a memorandum dated July 28, 1971 to Colson entitled "Neutralization of Ellsberg." Hunt proposed

the building of a file on Ellsberg to contain all available overt, covert and derogatory information in order to determine how to destroy Ellsberg's public image and credibility. Hunt suggested that Ellsberg's psychiatric files be obtained. Hunt suggested a CIA psychological assessment/evaluation on Ellsberg. Colson has testified that he forwarded Hunt's memorandum to Krogh. By memorandum dated August 3, 1971 Young reported to Colson that the psychological profile and certain other items mentioned in Hunt's memorandum were already underway and that the other suggestions in Hunt's memorandum were under consideration.

56. In August 1971 William Sullivan delivered to Robert Mardian the files and logs respecting the 1969-71 wiretaps and the FBI surveillances on Joseph Kraft. Shortly thereafter Mardian delivered these records to the White House. According to Maridan, when the materials were delivered by him to the White House Henry Kissinger and Alexander Haig were present and assured themselves that the summaries of wiretap information were identical to the summaries that Kissinger had previously received. A similar check was made with Haldeman as to summaries sent to him. Mardian has stated that two of the summaries sent to Haldeman were missing from Haldeman's records. Mardian then delivered the files and wiretap logs to the Oval Office of the White House.

57. On July 29, 1971 the President sent a letter to FBI Director Hoover asking him to furnish Krogh with files containing material about the investigation of Ellsberg and the Pentagon Papers. In response, on August 3, 1971, Hoover sent Krogh copies of FBI interviews and other material. In connection with its investigation of the disclosure and publication of the Pentagon Papers, the Special Investigations Unit also from time to time received information from the Department of Defense, the Department of State and other government agencies.

58. In the week prior to August 5, 1971 Krogh, Young, Hunt and Liddy discussed information that the FBI had sought to interview Ellsberg's psychiatrist, Lewis Fielding, but that Fielding had refused to discuss anything involving any of his patients. There was discussion about someone going into Fielding's office to find whatever information there was about Ellsberg. Liddy said that when he was in the FBI he had been involved in an entry operation. There was discussion of whether Cuban Americans who had worked with Hunt on the Bay of Pigs invasion might be available to make the actual entry into Fielding's office.

59. On or about August 5, 1971 Krogh and Young reported to Ehrlichman that the FBI had been unable to gain access

to Fielding's files on Ellsberg. They told Ehrlichman that to examine these records something other than regular channels through the FBI or through the ongoing agencies would have to be undertaken. Krogh told Ehrlichman that there were individuals in the unit and individuals available who had professional experience in this kind of investigation. Ehrlichman said that he would think about it. Ehrlichman has stated that he discussed with the President the need to send Hunt and Liddy to California to pursue the Ellsberg investigation and the President responded that Krogh should do whatever was necessary to get to the bottom of the matter — to learn Daniel Ellsberg's motive and potential for further action.

60. According to a document in the file of the Special Investigations Unit entitled "Specific Projects as of August 10, 1971," in addition to the investigation of Ellsberg and the Pentagon Papers and the SALT disclosure, the Unit undertook projects with respect to an analysis of leaks, press regulations, classification and declassification systems, the cancellation of software contracts and a polygraph study.

61. On August 11, 1971 the CIA delivered to Krogh and Young a psychological profile on Ellsberg dated August 9, 1971. On the same day Krogh and Young submitted a written status report to Ehrlichman on the entire Pentagon Papers project. The report referred to the psychological profile of Ellsberg that had been received, but stated that Krogh and Young considered it to be superficial. Krogh and Young recommended that a covert operation be undertaken to examine all the medical files still held by Ellsberg's psychoanalyst covering the two year period in which Ellsberg was undergoing analysis. Ehrlichman stated his approval of the recommendation if done with Krogh and Young's assurance that it was not traceable. Copies of the August 11 status report which were furnished by the White House to the House Judiciary Committee had the paragraph recommending a covert operation and Ehrlichman's approval deleted.

63. On August 12, 1971 Young, Hunt and Liddy met with the CIA staff psychiatrist who had directed the preparation of the Ellsberg psychological profile to discuss further development of the profile. Young told the psychiatrist of Ehrlichman's and Kissinger's personal interest in the profile and stated that the President had been informed of the study.

64. In discussions in mid-August 1971 concerning the plan to gain access to Dr. Fielding's files on Ellsberg, Krogh and Young told Hunt and Liddy not to be present when the operation was executed because of their association with the White House. During this period Hunt went to Miami, Florida where he recruited Bernard Barker for the operation.

Barker had worked with Hunt in connection with the Bay of Pigs invasion. Barker then recruited Felipe DeDiego and Eugenio Martinez, who had participated in intelligence work with Barker on previous occasions.

65. On or about August 19, 1971 Daniel Schorr, a television commentator for CBS News, was invited to the White House to meet with Presidential aides in connection with an allegedly unfavorable news analysis by Schorr of a Presidential speech. Thereafter, while traveling with the President, Haldeman directed Lawrence Higby, one of his aides, to obtain an FBI background report on Schorr. The FBI, following Higby's request, conducted an extensive investigation of Schorr. The FBI immediately interviewed 25 persons in seven hours, including members of Schorr's family, friends, employers, and the like. Schorr never consented to such an investigation. Following public disclosure of the investigation, the White House stated that Schorr was investigated in connection with a potential appointment as an assistant to the Chairman of the Environmental Quality Council. He was never appointed. Haldeman has testified that Schorr was not being considered for any federal appointment and that he could not remember why the request was made.

66. On August 19, 1971 Krogh and Young informed Ehrlichman that Colson had been instructed by the President to get something out on the Pentagon Papers. On August 24, 1971 Ehrlichman forwarded to Colson a memorandum on Leonard Boudin, Daniel Ellsberg's attorney, which was prepared by Howard Hunt. Colson released the Hunt memorandum to a newspaper reporter.

67. On August 25, 1971 Hunt requested and received from the CIA alias identification and disguise material for Liddy and a camera concealed in a tobacco pouch. Later that day Hunt and Liddy flew to Los Angeles for the purpose of obtaining information about Ellsberg and the Pentagon Papers disclosure. While in Los Angeles Hunt and Liddy sought to determine the feasibility of an operation to gain access to Dr. Fielding's files. Hunt and Liddy took photographs of the interior and exterior of Dr. Fielding's office. Upon Hunt's return from Los Angeles on either August 26 or 27, 1971 a CIA employee met Hunt at the airport, had the film processed and returned the prints to Hunt the same day. Hunt and Liddy showed the photographs to Krogh and Young and reported that a surreptitious entry was feasible.

68. On August 26, 1971 Young sent a memorandum to Ehrlichman stating that the plan was to develop slowly a negative picture around the whole Pentagon study affair (preparation to publication) and to identify Ellsberg's associ-

ates and supporters on the new left with this negative image. The memorandum referred to material to be developed from the present Hunt-Liddy project No. 1. The memo stated that it would be absolutely essential to have an overall game plan developed for its use in conjunction with a Congressional investigation. On the following day Ehrlichman sent a memorandum to Colson requesting a game plan for the use of materials obtained from Hunt-Liddy Special Project No. 1.

70. Krogh and Young have testified that they telephoned Ehrlichman at Cape Cod on or about August 30, 1971 and reported that Hunt and Liddy had returned from California and reported that a covert operation could be undertaken and would not be traceable. Ehrlichman gave his approval. Ehrlichman has testified that he does not recall receiving this telephone call.

71. Prior to September 2, 1971 either Krogh (according to Krogh) or Ehrlichman (according to Colson) requested Colson to obtain \$5,000. The money was to be used to finance the Fielding operation. Colson requested Joseph Baroody, a Washington public relations consultant, to deliver \$5,000 to Krogh who turned it over to Liddy. Several weeks later Colson caused Baroody to be repaid with \$5,000 from a political contribution by a dairy industry political organization.

72. On or about September 2, 1971 Hunt and Liddy flew to Chicago where they purchased cameras and walkie-talkies. Then they flew to Los Angeles where they met Barker, Martinez and DeDiego and purchased a crow bar, glass cutter, and other burglary tools. On the night of September 3, 1971, Barker, Martinez and DeDiego entered Dr. Fielding's office by breaking a first floor window of the building and breaking open the door to Dr. Fielding's second floor office. The file cabinets and desk in Dr. Fielding's office were broken into and searched. Liddy maintained a watch outside the building while Hunt, who was in communication by walkie-talkie, watched Dr. Fielding's residence. Barker, Martinez and DeDiego have testified that they did not locate any file on Ellsberg and that no information was obtained. Dr. Fielding has testified that his file cabinet had been broken into and the file on Ellsberg withdrawn.

73. On or about September 7, 1971 Hunt and Liddy delivered reports to Krogh and Young which included photographs of the physical damage to Dr. Fielding's office. Hunt and Liddy recommended a further operation to seek the files at Dr. Fielding's home. Krogh reported these facts to Ehrlichman. Ehrlichman has testified that the action far exceeded the authorization he had given and disapproved any further

covert activity. On the same day Hunt testified that he sought to discuss the entry into Fielding's office with Colson. Colson testified he declined to discuss the matter.

74. At 10:45 a.m. on September 8, 1971 Ehrlichman met with Krogh and Young and they discussed the Fielding break-in. At 1:45 that afternoon Ehrlichman telephoned the President and between 3:26 p.m. and 5:10 p.m. Ehrlichman met with the President. Ehrlichman has testified that he did not tell the President about the Fielding break-in. On September 10, 1971 Ehrlichman met with the President from 3:03 to 3:51 p.m. and at 4:00 p.m. Ehrlichman met with Krogh and Young.

77. On November 1, 1971 John Ehrlichman was informed by Egil Krogh and David Young in a memorandum that the prosecution of Daniel Ellsberg would be more difficult because (1) Ellsberg gave classified information to the press, not to a foreign power, (2) a few months after Ellsberg went public, the Department of Defense published virtually the same materials, and (3) there had been no apparent damage as a result of Ellsberg's disclosures.

78. Prior to November 9, 1971 members of the Plumbers Unit had conversed with the CIA staff psychiatrist who had directed the preparation of the Ellsberg psychological profile, and had sent materials to the CIA to be used in the development of that profile. On November 9, 1971 CIA Director Richard Helms wrote to David Young stating that the CIA's involvement in preparation of the Ellsberg profile should not be revealed in any context. On November 12, 1971 the CIA delivered to the Plumbers an expanded psychological profile of Daniel Ellsberg.

79. On December 14, 1971 after publication in a newspaper column of facts about the U.S. position on the India-Pakistan War, Krogh and Young were assigned to investigate the disclosure. Krogh was dropped from the Unit on December 20, 1971 after he refused to authorize specific wiretaps. Subsequently, four FBI wiretaps were authorized and instituted, and Young pursued the investigation that coincidentally uncovered the fact that classified documents were being passed to the Joint Chiefs of Staff from the military liaison office at the National Security Council in the White House. The FBI files contain no written instructions or authorization from either the Attorney General or the White House. The records of these taps were kept completely isolated from regular FBI files, and they were not entered in the electronic surveillance indices. Young rendered a report on the investigation in early January 1972, but the taps continued past that

date, the last being terminated June 20, 1972. The (military) liaison office was abolished.

80. On or about December 14, 1971 Gordon Liddy left the White House staff to become counsel to CRP and then later to FCRP.

81. On December 29, 1971, a fifteen count indictment of Daniel Ellsberg was filed alleging violations of the conspiracy statutes, and statutes prohibiting the unauthorized distribution of classified information and misappropriation of government property. No counts were included alleging the transmission of documents to a foreign country or representatives of a foreign country because evidence was not developed to support such a charge.

82. On December 30, 1971 Attorney General John Mitchell received a letter from Ehrlichman renewing Ehrlichman's suggestion that the Attorney General consider a voluntary non-suit of the Ellsberg prosecution.

83. On February 11, 1972 at the direction of Haldeman and Attorney General John Mitchell, Gordon Liddy and Howard Hunt met with Donald Segretti in Miami to review Segretti's activities. This meeting was in response to a memorandum sent to Haldeman and Mitchell entitled "Matter of Potential Embarrassment" prepared by Jeb Magruder, which stated that Segretti should be under Liddy's control. This memorandum was destroyed by Gordon Strachan on June 20, 1972. Hunt has testified that he and Liddy recommended that Segretti's operation be terminated, but that their recommendation was overruled.

84. On May 27, and June 17, 1972 five men under the supervision of Liddy and Hunt, entered the offices of the DNC at the Watergate office building for the purpose of gathering political intelligence and effecting electronic surveillance. Two of these five, Bernard Barker and Eugenio Martinez, had participated with Liddy and Hunt in the break-in at the offices of Daniel Ellsberg's psychiatrist.

85. On or about June 8, 1972 in the course of pretrial proceedings in the Ellsberg case, the Government, in response to an order of the Court, stated in an affidavit which was filed in the case that there had been no electronic surveillance of conversations of Daniel Ellsberg. This statement was repeated in affidavits filed on December 14, 1972 and February 23, 1973.

86. On June 20 or 21, 1972 Fred LaRue, Special Assistant to CRP Campaign Director John Mitchell, and Robert Mardian, an official of CRP acting as its counsel, met in LaRue's apartment with Gordon Liddy. Liddy told LaRue and Mardian that certain persons involved in the Watergate

break-ins previously had been involved in operations of the White House "Plumbers" unit, including the entry into the offices of Daniel Ellsberg's psychiatrist. Liddy told Mardian and LaRue that commitments for bail money, maintenance and legal services had been made to those arrested in connection with the DNC break-in and that Hunt felt it was CRP's obligation to provide bail money and to get his men out of jail.

87. On or about June 21, 1972 Mardian and LaRue met with John Mitchell and told him of their meeting with Liddy, including Liddy's statements about the break-in into the office of Daniel Ellsberg's psychiatrist. Mitchell was also advised of Liddy's request for bail money and of Liddy's statement that he got his approval in the White House. Mitchell instructed Mardian to tell Liddy that bail money would not be forthcoming. Mitchell has testified that he refrained from advising the President of what he had learned because he did not think it appropriate for the President to have that type of knowledge, and that he believed that knowledge would cause the President to take action detrimental to the campaign and that the best thing to do was just to keep the lid on through the election.

88. On June 23, 1972 H.R. Haldeman met with the President. The President directed Haldeman to meet with CIA Director Richard Helms, Deputy CIA Director Vernon Walters and John Ehrlichman. The President directed Haldeman to discuss White House concern regarding possible disclosure of covert CIA operations and operations of the White House Special Investigations Unit (the "Plumbers"), not related to Watergate, that had been undertaken previously by some of the Watergate principals.

89. On or before June 25, 1972, immediately after the FBI had contacted Donald Segretti as part of the Watergate investigation, John Dean met with Segretti in the EOB to advise Segretti on how to deal with his impending FBI interview. In this meeting, arranged by Dwight Chapin and Gordon Strachan, Dean told Segretti not to reveal his relationship with Chapin, Strachan or Herbert Kalmbach to the FBI, if possible, and during the subsequent FBI interviews, Segretti withheld this information. A copy of the interview summary FBI 302 form was given to Dean by the FBI. In July 1972 Chapin instructed Segretti to destroy his records.

90. On or about June 27, 1972 John Dean and Fred Fielding, his assistant, delivered to FBI agents a portion of the materials from Howard Hunt's safe. The materials given to the FBI agents included top secret diplomatic dispatches relating to Vietnam. The portion withheld from the FBI

agents included fabricated diplomatic cables purporting to show the involvement of the Kennedy administration in the fall of the Diem regime in Vietnam, memoranda concerning the Plumbers unit, a file relating to an investigation Hunt had conducted for Charles Colson at Chappaquidick, and two notebooks and a pop-up address book.

91. On or about June 28, 1972 John Dean was informed that the FBI was attempting to interview Kathleen Chenow, who was the secretary of David Young and Egil Krogh when they were active as part of the White House Special Investigations Unit. Dean has testified that he informed John Ehrlichman of problems connected with Chenow's interview and Ehrlichman agreed that before her FBI interview Chenow should be briefed not to disclose the activities of Howard Hunt and Gordon Liddy while at the White House. On June 28, 1972 Dean telephoned Acting FBI Director Gray and requested that Chenow's interview be temporarily held up for reasons of national security. Gray agreed to the request.

92. On June 28, 1972 L. Patrick Gray met with John Ehrlichman and John Dean. At this meeting Gray was given two folders containing documents which he was told had been retrieved from E. Howard Hunt's safe and had not been delivered to FBI agents when the remainder of the contents of the safe was delivered on June 27, 1972. Gray was told that these documents were politically sensitive, were unrelated to Watergate, and should never be made public. Gray destroyed these documents in December 1972. Dean did not deliver to Gray the two notebooks and pop-up address book that had been found in Hunt's safe; Dean has related that he discovered these items in a file folder in his office in late January 1973, at which time he shredded the notebooks and discarded the address book.

95. On August 28, 1972 Egil Krogh appeared and testified falsely before the Watergate Grand Jury that he had no knowledge that Howard Hunt had traveled any place other than Texas while he was working on the declassification of the "Pentagon Papers." He also testified falsely that he knew of no trips to California "for the White House" by Gordon Liddy.

97. In October 1972, according to Haldeman, the President read newspaper stories linking Segretti and Kalmbach and asked Haldeman about them. Haldeman has testified that he had specific information to answer the President's questions about Segretti.

98. After November 5, 1972 Ehrlichman received a detailed factual chronology prepared by Chapin about White House involvement with Segretti. In preparing the chronol-

ogy, Chapin used blanks instead of the names of Haldeman and Mitchell. Chapin has testified he did this out of a deep sense of loyalty to Haldeman.

99. On November 10, 1972 Dean met with Segretti in California and taped the conversation, during which Segretti explained his activities, some of which were criminal, and his involvement with Chapin. Dean has testified that at Ehrlichman's direction, he played the tape recording for Haldeman and Ehrlichman at Key Biscayne on November 12, 1972. On November 15, 1972 at Camp David, Haldeman and Ehrlichman told Dean that the President had decided that Chapin had to leave the White House.

100. On December 18, 1972 Ronald Ziegler, the President's Press Secretary, announced that Chapin would continue during the second term as Deputy Assistant to the President. In January 1973 Ziegler announced that Chapin would leave the Administration, but denied that his departure was a result of his relationship with Segretti. Chapin has testified that he left the White House because of the publicity about his connection with Segretti; that he was interested in protecting the President because the President did not know anything about Segretti's activities; that he was also interested in protecting Haldeman.

101. On January 8, 1973 former CIA Deputy Director Cushman sent a memorandum to John Ehrlichman identifying as the person who requested CIA assistance for E. Howard Hunt in 1971 one of the following: Ehrlichman, Charles Colson or John Dean. On January 10, 1973 after discussions with Ehrlichman and Dean, Cushman changed the memorandum to state that he did not recall the identity of the White House person who requested assistance for Hunt.

102. Early in 1973 John Dean met with Assistant Attorney General Petersen. Petersen showed Dean documents delivered by the CIA to the Department of Justice at an October 24, 1972 meeting, including copies of the photographs connecting E. Howard Hunt and Gordon Liddy with Dr. Fielding's office. On a second occasion prior to February 9, 1973 Dean met with Petersen and discussed what the Department of Justice would do if requested by the CIA to return materials. Petersen told him that a notation that the materials had been sent back to the CIA would have to be made in the Department's files.

103. On February 9, 1973 Dean called CIA Director James Schlesinger. Dean suggested that the CIA request the Department of Justice to return a package of materials that had been sent to the Department of Justice in connection with the Watergate investigation. Deputy CIA Director Wal-

ters contacted Dean on February 21, 1973 and refused Dean's request.

104. On or about February 22 or 23, 1973 Dean has testified that *TIME* magazine notified the White House that it was going to print a story that the White House had undertaken wiretaps of newsmen and White House staff members. Dean made inquiries of assistant FBI Director Mark Felt, former Attorney General Mitchell, and former Assistant FBI Director William Sullivan respecting this matter. According to Dean, he called John Ehrlichman. Ehrlichman admitted that he had the logs and files of these wiretaps in his safe, but directed Dean to have Presidential Press Secretary Ronald Ziegler flatly deny the story. According to Dean, he called Ziegler and so advised him. *TIME* quoted a White House spokesman as stating that no one at the White House asked for or received any such taps.

105. On February 28, 1973 the President met with John Dean. They discussed the February 26 *TIME* magazine story about the 1969-71 wiretaps. Dean also informed the President of his conversations with William Sullivan respecting conduct by prior administrations with relation to the FBI. Dean said the White House was stonewalling the *TIME* magazine story totally, and the President said oh, absolutely. The President stated that the tapping was a very unproductive thing and had never been useful in any operation that the President ever conducted.

***Transcript of February 28, 1973 Meeting Prepared
by the Impeachment Inquiry Staff.***

PRESIDENT: They are never going to — It's just as well, to be candid with you. Just as well. But, uh — so Hoover told Coyne, and, uh, and — who told Rockefeller,

DEAN: — That this —

PRESIDENT: who told Kissinger that newsmen were being bugged

DEAN: Yeah.

PRESIDENT: by us.

DEAN: That's right.

PRESIDENT: Now why would Hoover do that?

DEAN: I don't have the foggiest. This was Sullivan's story as to where, uh, the leak might have come from about this current *TIME* Magazine story, which we are stonewalling totally, uh —

PRESIDENT: Oh, absolutely.

PRESIDENT: Sure. And the, and the, and the, and

Henry's staff — He insisted on Lake, you see, after working with McGov—, uh, uh, for Muskié.

DEAN: Um huh.

PRESIDENT: Incidentally, didn't Muskie do anything bad on there? (Unintelligible) Henry (unintelligible). At least I know not because I know that, I know that he asked that it be done, and I assumed that it was. Lake and Halperin. They're both bad. But the taps were, too. They never helped us. Just gobs and gobs of material: gossip and bullshitting (unintelligible).

DEAN: Um huh.

PRESIDENT: The tapping was a very, very unproductive thing. I've always known that. At least, I've never, it's never been useful in any operations I've ever conducted. Well, is it your view that we should try to get out that '68 story then, if we can?

DEAN: Well, I think the threat,

PRESIDENT: (Unintelligible).

106. On March 1, 1973 Acting FBI Director Gray testified publicly before the Senate Judiciary Committee that he had checked the records and indices of the FBI and had found no record that newsmen and White House officials had been wiretapped. By a written report dated February 26, 1973 Assistant FBI Director E.S. Miller had furnished to Assistant FBI Director Mark Felt information respecting the wiretaps referred to by *TIME* Magazine.

107. On February 28, March 8, 13 and 14, 1973 the President discussed the extent of Segretti's White House involvement with Dean. Between March 18 and March 22, 1973 Richard Moore prepared a factually accurate report about Segretti's relationship with Chapin and Kalmbach and a copy was forwarded to Ehrlichman, but it was not released to the public.

108. On March 13, 1973 the President met with John Dean. The President stated that Patrick Gray should not be FBI director and mentioned another possible appointee to that position. Dean also reported to the President on the information that Sullivan had about the 1969-71 wiretaps.

109. On March 20, 1973 Krogh has testified that he met with Dean in Dean's EOB office and they discussed Hunt's threat to tell all the seamy things that he had done for Ehrlichman unless he was paid more than \$100,000. Following this meeting, Krogh had a telephone conversation during which Ehrlichman said that Hunt was asking for a great deal of money and if the money was not paid Hunt might blow the lid off and tell all he knew. During the same period

Ehrlichman reviewed with Young what Hunt might say in the light of the blackmail attempt.

110. On the afternoon of March 21, 1973 the President met with H. R. Haldeman, John Ehrlichman and John Dean. Ehrlichman stated that the disclosure of Hunt's activities regarding the break-in at Ellsberg's psychiatrist's office raised search and seizure problems which could result in a mistrial in the Daniel Ellsberg prosecution. Krogh has testified that on March 21, 1973 Ehrlichman said that perhaps Krogh and Young should tell the Department of Justice about the events of 1971 under a grant of limited immunity, but Ehrlichman told Krogh not to do anything about this possibility until the next day when Mitchell would arrive in Washington and it could be learned how Hunt's demand would be or had been handled.

111. On March 22, 1973 Ehrlichman telephoned Krogh. Krogh has testified that Ehrlichman told Krogh he had learned from Mitchell that Hunt was stable and would not disclose all; Ehrlichman told Krogh to hang tough. Krogh also has testified that Dean told Krogh on March 22, 1973 that Krogh should not do anything rash.

112. Prior to March 27, 1973 David Young, at Ehrlichman's request, delivered to Ehrlichman's office the Special Investigations Unit's files on the Pentagon Papers investigation. Young has testified that on March 27, 1973 Ehrlichman told Young that Hunt might reveal the Fielding break-in, that Ehrlichman had recently discussed the Fielding break-in with Krogh, who during that conversation said that he was responsible, and that Ehrlichman had not known about the break-in until after it occurred. Young also has testified that he told Ehrlichman that he felt sure Ehrlichman had been aware of the California operation and that this fact was reflected in the documents delivered to Ehrlichman. According to Young, Ehrlichman said he would keep those memoranda because they were too sensitive and showed too much forethought. Ehrlichman has denied removing documents from the file.

113. On March 27, 1973 the President met with H.R. Haldeman and John Ehrlichman. The President decided that a new nominee for FBI director should be announced at the time that Patrick Gray's name was withdrawn. The President said that a judge with prosecuting background might be a good nominee. Haldeman told the President that Hunt was appearing before the Grand Jury that day and he did not know how far Hunt was going to go. On March 28, 1973 Hunt was given immunity and ordered to testify before the Grand Jury. On the same day, Ehrlichman telephoned Attorney General Kleindienst and stated that the President might

want to see the Attorney General in San Clemente on Saturday, March 31.

**White House Edited Transcript of March 27, 1973
Meeting, 11:10 A.M. to 1:30 P.M.**

H . . . there is one thing you might consider is that O'Brien and Parkinson, who are getting a little shaken now themselves, are retained by the Committee. That is by Frank Dale. He is the Chairman of the Committee.

P Does that still exist?

H Yes. They are —

P They aren't involved in the damn thing are they? O'Brien and Parkinson?

H Yes.

P They ran this all from the beginning?

H Oh, no.

P Well, that is what I thought.

H But they are involved in the post-discovery, post -June 17th.

P (expletive removed)! (unintelligible)

H O'Brien says, "Everything with the Committee—what you might want to consider is the possibility is to waive our retainer, waive our privileges and instruct us to report to the President all of the facts as they are known to us as to what really went on at the Committee to Re-Elect the President."

P For me to sit down and talk to them and go through—

H I don't know. He doesn't mean necessarily personally talk to you, but he means talk to Dean or whoever you designate as your man to be working on this. Now, other facts. Hunt is at the Grand Jury today. We don't know how far he is going to go. The danger area for him is on the money, that he was given money. He is reported by O'Brien, who has been talking to his lawyer, Bittman, not to be as desperate today as he was yesterday but to still be on the brink, or at least shaky. What's made him shaky is that he's seen McCord bouncing out there and probably walking out scot free.

P Scot free and a hero.

H And he doesn't like that. He figt as here's my turn. And that he may go —

P That's the way I would think all o them would feel.

H And that he may decide to go with as much as is necessary to get himself into that same position, but probably would only go with as much as is necessary. There isn't a feeling on his part of a desire to get people, but a desire to take care of himself. And that he might be willing to do what

he had to do to take care of himself, but he would probably do it on a gradual basis and he may in fact be doing it right now at the Grand Jury. He feels, in summary, that on both Hunt and Magruder questions we're not really in the crunch that we were last night. He is not as concerned as he was when he talked with you last night.

114. On March 31, 1973 John Ehrlichman and H.R. Haldeman met with Attorney General Kleindienst at San Clemente, California. There was a discussion of Judge Matthew Byrne, Jr., the presiding judge in the on-going criminal trial of Daniel Ellsberg, as a potential nominee for FBI director. Ehrlichman has testified that he told Kleindienst that the President had instructed Ehrlichman to contact Byrne and Kleindienst expressed wholehearted approval of the meeting. Kleindienst has testified while he approved of Byrne as the choice for the FBI Directorship, he does not recall Ehrlichman indicating that he planned to talk with Byrne because if Ehrlichman had, Kleindienst would have said this should not be done while the trial was going on. The President has stated that Kleindienst first recommended Byrne as FBI Director and then Ehrlichman called Byrne.

115. On April 4, 1973 John Ehrlichman telephoned Judge Byrne. Ehrlichman has testified that he asked Byrne if this was an appropriate time in light of the present situation in the Ellsberg trial for a conversation to discuss a non-judicial federal appointment and that Byrne responded they could talk right away. Judge Byrne has stated that Ehrlichman requested a meeting on a subject which had absolutely nothing to do with the case. On April 5, 1973 Ehrlichman met with Judge Byrne at San Clemente, California. Ehrlichman has testified that he told Judge Byrne to walk away if a subject arose which he felt might impinge on his ability to fairly try the Ellsberg case. Ehrlichman told Judge Byrne that the President was interested in knowing whether or not Judge Byrne had an interest in being nominated as the director of the Federal Bureau of Investigation. Ehrlichman has testified Judge Byrne indicated a very strong interest in the position. Judge Byrne has stated that he advised Ehrlichman that his initial reaction was that he could not and would not give consideration to any other position until the Ellsberg case was concluded. During this meeting the President was introduced to Judge Byrne and exchanged greetings with him.

116. On April 6, 1973 Judge Byrne requested a second meeting with Ehrlichman. On April 7, 1973 Ehrlichman met with Judge Byrne in a park at the corner of Ocean Avenue and Montana Street in Santa Monica, California. Ehrlichman has testified that Judge Byrne again evidenced a very sharp

interest in the FBI directorship. Judge Byrne has stated that he, at Ehrlichman's suggestion, had reflected on his initial reaction and reaffirmed that he would not consider nor in any way discuss the position as director of the FBI while the Ellsberg case was pending before him.

117. On April 11, 1973 Chapin made false declarations before the Watergate Grand Jury in responding to questions about White House involvement with Segretti. Chapin testified that he wanted to protect Haldeman in his testimony and reported to the White House immediately after the appearance that Haldeman's name had been mentioned in connection with hiring Segretti.

118. On April 14, 1973 the President, Haldeman and Ehrlichman discussed at several meetings Haldeman's involvement with Segretti and the resulting legal or political problems of that connection. They discussed whether Haldeman should make a public disclosure of this activity.

119. On April 15, 1973 John Dean told the Watergate prosecutor that E. Howard Hunt and Gordon Liddy had participated in a break-in at the office of a psychiatrist of Daniel Ellsberg. In a memorandum dated April 16, 1973 Silbert reported to Henry Petersen the information he received respecting the break-in. Petersen ordered a Department of Justice investigation to determine if there was any information in the possession of the prosecutor in the Ellsberg trial then being conducted in Los Angeles, which emanated from the burglary of the psychiatrist's office. On April 18, 1973 Petersen received two memoranda stating that no information had been derived from such a source.

120. On April 16, 1973 from 10:00 to 10:40 a.m. the President met with John Dean. The President stated that the electronic surveillance of Kraft was done through private sources because Hoover did not want to do it, but it was finally turned over to the FBI. The President stated that the surveillance was necessary because leaks from the NSC were in Kraft's and other columns. The President stated that this information was privileged and Dean agreed.

Transcript of April 16, 1973 Meeting Prepared by The Impeachment Inquiry Staff

PRESIDENT: One other thing. On the privilege thing, I think, uh — Nothing, so that you could be sure, that, you know, nothing is privileged that involves wrongdoing

DEAN: That's correct.

PRESIDENT: on your part or wrongdoing on the part of anybody else. I, I, I'm telling you that now I want you to s—,

when you testify, if you do, to say that the President has told you that. Would you do that?

DEAN: Yes, sir.

PRESIDENT: Would you agree with that?

DEAN: I do.

PRESIDENT: Fine. However, let me say that, uh, with regard to, with regard to what we call the electronic, uh, stuff they heard in what I have now have found is in the leak area, national security area, uh, that I consider privileged.

DEAN: I do too.

PRESIDENT: And I think you should say, for example, on that—But what I meant is, uh, uh, I would, uh. I think in, in the case of the, of the Kraft stuff, what the FBI did, they were both, I find — I've checked it back—there were some done, some done through, uh, private sources. Most of it was done through the Bureau after we got going.

DEAN: That's right.

PRESIDENT: Hoover didn't want to do, uh, to do Kraft. But what it involved, John, apparently was this: there were leaks in the NSC. They were in Kraft and other columns. We were trying to plug the leaks.

DEAN: Right.

PRESIDENT: And we had that, so we checked it out. Finally, we turned it over to Hoover. Then when the hullaballoo developed we didn't, we just stopped it altogether.

DEAN: I understand.

PRESIDENT: And that includes (unintelligible). But in my, uh, view I consider that privileged.

DEAN: I have no intention of raising that in any —

PRESIDENT: Have you informed your lawyers about that?

DEAN: No.

PRESIDENT: I think you should not. Understand, not because of cutting anything, except that I do think it's privileged. But it's up to, up to you, I mean, I—

DEAN: No. I think it is privileged, also.

122. On April 18, 1973 the President had a telephone conversation with Henry Petersen. Petersen told the President that the prosecutors had obtained information that the office of Daniel Ellsberg's psychiatrist had been burglarized by Hunt and Liddy. The President replied that he knew of it, that it was a national security matter, and that the Department of Justice was not to investigate it. The President also ordered the Watergate prosecutors not to question E. Howard Hunt about these activities as they had planned. Petersen immediately relayed the President's orders to Silbert.

Henry Petersen Testimony, August 23, 1973, Watergate Grand Jury

Q. And on the 18th did you have a discussion with respect to immunity?

A. Yes. I received a telephone call from the President and he was rather angry. He said, in effect, "You told me that Dean wasn't immunized and now I know that he is, and I know that he is because he told me."

I said, "Well that simply isn't so." I guess that Presidents don't like you to say that it simply isn't so. The conversation got nasty and it made me uneasy.

I said, "Well, I'll double check on it, but I know that it isn't so."

I got in touch with Earl Silbert and I said, "Earl, this is what he says. He says that he has it on tape and he offered to let me listen to it and I told him I didn't want to listen to it."

Q. You left that part out of the conversation. I'm sorry, Mr. Petersen. The President indicated that he had it on tape?

A. Well, he said, "I know it's so." I said that I thought that was wrong, and he said, "Well, I have it on tape. Do you want to hear it?" I said, "No, I'll accept your word for it. If you tell me that's what Dean said, I'll accept it, but I think that's wrong. I don't see that he has any reason—he has not been immunized and I'm the one that has to exercise the authority and I know I haven't exercised it, but I will check."

I asked Mr. Silbert to get in touch with Charlie Schaffer, and Earl called me back later in the evening and said, "Mr. Schaffer confirmed our understanding was correct, that we were simply negotiating for immunity and no immunity has been conferred either formally or informally."

I called the President back and told him that, and that seemed to reassure him. It certainly reassured me. At least he didn't think that I was misleading him, and I guess that was my real concern at that point.

He said, "What else is new?" I said, "I got this report that Liddy and Hunt burglarized Fielding's office."

Q. Can I interrupt you for a second with that? Is this the first that you had ever heard in this investigation of the President or his agents tape recording any conversations?

A. Yes, but it didn't surprise me.

Q. I'm sorry. Go on.

A. With respect to the second part of this conversation, I would be surprised to learn that a chief of state did not

record conversations and I assumed when I spoke with him that our conversations were being recorded.

In any event, he said, "What else is new?", and then I dropped the next bombshell. It was that Dean had informed Silbert that Liddy and Hunt and company had burglarized Dr. Fielding's office who was Ellsberg's psychiatrist.

The President said, "I know about that. That's a national security matter. Your mandate is Watergate. You stay out of that."

I said, "Well, I have caused a check to be made, and we don't have any information of that nature in the case." I said, "Do you know where there is such information?", and he said no.

He said, "There's nothing you have to do." Then I got off the phone.

I called Mr. Silbert and told him what the President had said. I guess he was kind of upset about it. He just kind of grunted or groaned. I said, "Well, Earl, that's it."

Then I called Mr. Maroney and told him to — Mr. Maroney is the Deputy Assistant Attorney General who has the Internal Security Section which had the Ellsberg case under his jurisdiction.

Without referring to the President, I told him to forget about it. . . .

123. On April 19, 1973 the President discussed with his Special Counsel, Richard Moore, Ehrlichman's possible criminal liability arising out of events connected with the Ellsberg case.

124. On April 25, 1973 Petersen delivered to Attorney General Kleindienst the Justice Department memoranda written by Silbert, Martin and Maroney respecting the break-in of the office of Ellsberg's psychiatrist. They agreed that the information about the break-in should be disclosed to Judge Byrne.

125. On the afternoon of April 25, 1973, Attorney General Kleindienst had a conversation with the President. Kleindienst showed the President the Justice Department memoranda relating to the break-in at the psychiatrist's office and informed the President that the information should be disclosed to the Court in the Ellsberg case. The President authorized him to do so.

Richard Kleindienst Senate Watergate Committee Testimony, August 7, 1973

Mr. Dorsen: When did you first learn of the fact, which apparently is a fact, that White House employees or persons

working at the behest of the White House employees burglarized the office of psychiatrist of Dr. Daniel Ellsberg?

Mr. Kleindienst: I learned that amazing bit of information some time in the morning of Wednesday, April 25, 1973.

Mr. Kleindienst: Mr. Petersen . . . handed to me, without saying anything, a copy of a memorandum dated April 16 from Mr. Silbert to himself...

I read the two memos after I had recovered my composure and had uttered some of my abrupt remarks. He and I then began to discuss the dire serious nature of this amazing revelation. We discussed it for some time. It had a — it had a fantastic potential effect upon the trial of the Ellsberg case. It had a — certainly a fantastic potential with respect to the constitutional rights of Mr. Ellsberg, a defendant. And I believe our conversation kicked around until just before noon.

Before lunch I then placed a call to the White House. Usually when you call and want to see the President they want to know what you want to talk to him about. I was very insistent in this instance to say it was a matter of great urgency but I could not describe the reason for the meeting.

...I received a call from the White House that I could come over right away, I could see the President. I did. I gave him — I had those memos, those papers with me. I had some — I have a couple of cases that, you know, I could discuss, you know, a little note pad, but I did not give those citations. He, without hesitation, one moment's hesitation, said that the course of action that I was going to pursue was the only thing possible to be done. He caused the memos to be Xeroxed. He kept a copy of the memos and I left.

The meeting did not last very long because there was no problem in his mind or my mind or anybody else's mind as to what we had to do under the law.

126. On April 26, 1973 David Nissen, the prosecutor in the Ellsberg case, was instructed to file the four Justice Department memoranda relating to the break-in at the psychiatrist's office with the court *in camera*. Nissen filed the documents *in camera* after court had adjourned at 2:45 p.m. At 4:05 p.m. Judge Byrne reconvened court and stated that the prosecutors had made an *in camera* filing. He also stated that after examining the materials he would not accept the filed materials *in camera*, and asked the prosecutors to advise him by next morning as to what the government's position would be with respect to turning the material over to the defendants. The next morning on April 27, 1973, Nissen informed Judge Byrne that the Washington office did not want the contents of the *in camera* filing disclosed to the

defense. Judge Byrne ordered that the information be supplied to the defense and in open court read the memorandum from Silbert to Petersen dated April 16, 1973. Judge Byrne also ordered a government investigation to determine if the defendants' Constitutional rights had been violated by the break-in.

127. On April 27, 1973 FBI agents interviewed John Ehrlichman about the break-in of the office of Dr. Lewis Fielding, Daniel Ellsberg's psychiatrist. Ehrlichman stated E. Howard Hunt and Gordon Liddy had been designated in 1971 to conduct an investigation of the Pentagon Papers leak directly out of the White House. Ehrlichman stated that he knew Liddy and Hunt had gone to California to investigate Ellsberg's habits, mental attitudes and emotional and moral problems. Ehrlichman stated he learned of the break-in after it had occurred and he then instructed Hunt and Liddy not to do this again. Ehrlichman told the FBI he did not know if any information had been obtained in the burglary and that he had not authorized the burglary.

128. On April 30, 1973 in response to an inquiry by defense attorneys, Judge Byrne disclosed that he had met previously with Ehrlichman at which time a possible federal appointment was discussed, and that at the same time he had met the President. Judge Byrne also turned over to the defense the three additional Justice Department memoranda relating to the break-in at the psychiatrist's office and ordered the government to investigate and disclose all information that may exist concerning electronic surveillance of the defendants.

129. On April 30, 1973 John Ehrlichman met with David Young. Ehrlichman told Young that his files were to go to the President because the Ellsberg operation was a matter of national security. Young was instructed to decline to answer any inquiries on grounds of national security and executive privilege. Young has testified that he expressed concern that Ehrlichman had not told the FBI that he had approved the California operation beforehand and Ehrlichman replied that he was not asked that question. Young has testified that Ehrlichman told him not to address the question of whether Ehrlichman had discussed the Fielding break-in with President in advance of its occurrence.

130. On May 2, 1973 as a result of a renewed defense motion raising the propriety of Judge Byrne's meeting with Ehrlichman, Judge Byrne stated that he had met with Ehrlichman both on April 5, 1973 and April 7, 1973 and disclosed that the position discussed had been the FBI directorship.

131. On May 10, 1973 Judge Byrne received two memo-

randa, one from Acting FBI Director William Ruckelshaus and the other from Assistant Attorney General Henry Petersen. The Ruckelshaus memorandum stated that he had received a preliminary report indicating that Daniel Ellsberg had been overheard talking from the residence of Dr. Morton Halperin at a time when Ellsberg was a guest of Halperin. The Petersen memorandum informed Judge Byrne that the government did not know how many interceptions of Ellsberg took place, when they took place, between whom they occurred, or what was said. Nor did the government know what had happened to the tapes, logs or other records pertaining to the surveillance.

132. On May 10, 1973 former Assistant Attorney General Robert Mardian disclosed to agents of the FBI that at the direction of the President he had delivered the 1969-71 wiretap records to the Oval Room in the White House.

133. On May 11, 1973 Judge Byrne dismissed the indictment in the Ellsberg case on the grounds of governmental misconduct including the action taken by a special investigations unit established by White House officials to investigate Daniel Ellsberg and the inability of the government to produce the wiretap logs on Daniel Ellsberg. On that same day, at an interview which took place approximately one hour after Judge Byrne ordered dismissal, Ehrlichman informed agents of the FBI that records of the electronic surveillance delivered to him by Mardian were located in Ehrlichman's White House safe. On May 12, 1973 William Ruckelshaus went to the White House and retrieved the electronic surveillance records from a room into which Ehrlichman's records had been moved following his resignation.

Statement of Information Submitted on Behalf of the President

BOOK IV: DOMESTIC SECURITY

The following Statements of Information and related evidence are taken from Book IV of four such statements submitted by James St. Clair, Special Counsel to the President. They cover the development of a special White House unit to trace the origins of national security leaks. No statements have been deleted, but only the high points of the evidence are retained here.

1. On June 5, 1971, Ehrlichman sent a memorandum to Dean in which he stated there was a recent episode in which information was leaked to a newspaperman and asking whether this is in violation of any statute and also if there is any oath or commitment taken by intelligence people regarding secrecy of information in their possession. Tod Hullin inquired of Dean as to the status of this request in a memorandum dated June 25, 1971. Dean inquired of Hullin on June 29, 1971, whether in light of *The New York Times* matter the report was still wanted. On July 2, 1971, Dean forwarded this memorandum for Ehrlichman, dated June 16, 1971, to Hullin.

2. The Special Investigative Unit was established to deal with the problem of security leaks and only afterwards did it become a field operative investigative force, because, in part, of problems arising with the FBI.

3. On June 30, 1971, General Haig sent a memorandum to the heads of all U. S. Departments and Agencies indicating the President's request for a security clearance review.

4. Colson, during the period immediately following the Pentagon Papers disclosure, was responsible for analyzing the accuracy of the Pentagon Papers and the relationship between the White House and the Congressional Committees that were planning to investigate this affair. In late June, Haldeman asked him to find a person who could assume full-time responsibility for these functions. E. Howard Hunt was finally chosen for this position.

5. On July 2, 1971, Colson sent a memorandum to Halde-

man with an attachment containing a portion of Alexander Bickel's argument before the Supreme Court.

6. On July 3, 1971, Colson sent a memorandum to Ray Price setting forth several points the President wanted included in a Presidential statement.

Charles Colson Memorandum, July 3, 1971

Memorandum for: Ray Price

From: Charles Colson

The President this morning gave me the following points which he would like to have drafted into a statement which he may want to use in Kansas City. In any event, if he decides not to use it, it is a thesis that he would like to see developed as a major Administration statement.

The points went as follows:

1. A former Government official or officials in clear violation of the Espionage Act delivered stolen, top secret papers to the press. (The statement about "in clear violation of the Espionage Act" should be double checked — will have to be modified to the correct legal phraseology.)

2. This Administration sought to enjoin the publication of those documents. There was no reason we should do this — certainly from a political standpoint in view of the fact that these were records involving prior Administrations.

3. But there were higher issues involved than any political consideration. I took an oath to enforce the law of this land. The law clearly says that no one — editor or President, for that matter can put himself above the law. The law in this instance imposed a very clear obligation upon this Government.

4. The court has now ruled that the newspapers do have the right to print these documents. I will not question that decision (the characterization of what the Court did rule should be made quite clear because they did not hold that under no circumstance could the Government seek and make stick an injunction).

5. The real question, however, is: *Should* a newspaper in the great tradition of our free press exercise that right in an unrestricted way.

7. I am negotiating on many fronts for peace. Many of these negotiations could not succeed unless they were conducted in secret and vital information is protected. I will keep my oath to enforce the law; moreover my primary obligation is the protection of American lives and the return of POWs. If secret negotiations are necessary to this end then I will do everything in my power to protect the security of those negotiations.

8. I can well understand that newspapers must seek stories and scoops both to inform the public and obviously because they are in a very competitive commercial enterprise. They must seek to inform the public and increase their circulation but if I have a choice between the life of one American and a newspaper's understandable desire to obtain information, I will put one man's life above this. No story, even if it would sell a million more newspapers, is worth the life of one American.

9. As far as the record of this Administration is concerned, I have nothing to hide. I deeply believe in the people's right to know but my first obligation is to the future and to keeping the peace for the future.

7. On or about July 15, 1971, Ehrlichman told Krogh to begin this "special" national security project. While Krogh was under the overall aegis of Ehrlichman, he did not regularly report to Ehrlichman.

8. On July 16, 1971, Colson sent a memorandum to Ehrlichman indicating that according to a report from Frank Stanton the FBI made an extensive investigation of the Rand Corporation centering on an alleged leak of documents by Ellsberg and the FBI had a "solid case" but the FBI elected not to act.

Charles Colson Memorandum, July 16, 1971

Memorandum for: John Ehrlichman

From: Charles Colson

Frank Stanton, who was on the board of the Rand Corporation, told me yesterday that at a recent executive committee meeting it was disclosed that the FBI had made an extensive investigation at Rand in April of 1970. The investigation centered about an alleged leak of documents by Ellsberg. I am sure this is the incident you told me about over the phone.

According to the report given to the Rand executive committee, the FBI had a solid case but did nothing with it. Stanton suggested that it should be a matter of great concern to us especially if there is any truth to Rand's assertion that there was a solid case and the FBI elected not to act.

In view of the fact that Rand obviously used this as a way to protecting themselves and shifting responsibility back on us, I would think that the file should be very carefully examined and we should be certain of precisely what happened internally that caused the case to be turned off.

9. The FBI made two unsuccessful attempts to interview Dr. Lewis Fielding on July 20 and 26, 1971.

10. On July 21, 1971, David Young attended a meeting at

CIA headquarters, Langley, Virginia, discussing the CIA's involvement with the Pentagon Papers.

David Young Memorandum of Conversation, July 21, 1971

(14) I also brought up with Helms and Osborne the question of the delivery of the documents to the Soviet Union. According to an FBI report, this was done on June 17, 1971. They received 5,000 or 6,000 pages. Osborne said that he was not sure they were working on this but he would check. I asked if the Agency didn't have some way of trying to find out what came out at the other end and if for sure the papers had been received by the Soviet Union.

(15) On the delivery of the papers to the Soviet Union Helms said, "Well, I doubt very much if we will get to see it if it is a true report, but quite honestly we know the fellow who has been giving us these reports and we have our doubts about them."

11. On July 24, 1971, the President held a meeting with Ehrlichman and Krogh, to discuss efforts to identify the source of the SALT leak and the use of a polygraph on State Department personnel suspected of being the source of the leak. The President did not authorize the use of illegal means by the Unit.

12. On July 26, 1971, David Young attended a meeting at the State Department to discuss the specifics related to the preparation of the Pentagon Papers.

13. On July 26, 1971, Colson sent a memorandum to Ehrlichman recommending that a study be prepared to Top Secret leaks that appeared in *The New York Times* and suggesting that Krogh and Young could do this.

14. On July 28, 1971, Young prepared a memorandum for the record summarizing a meeting he attended concerning overall White House direction of the matters surrounding the Ellsberg inquiry.

15. On July 30, 1971, Krogh and Young sent a memorandum to Ehrlichman on the status of the Ellsberg inquiry.

16. On August 9, 1971, Young attended a meeting at CIA headquarters to discuss the problem of leaks.

17. On August 13, 1971, Young and Krogh sent a memorandum to Ehrlichman indicating that an attached newspaper article endangered the life of a clandestine CIA operative.

18. Ehrlichman testified that he first learned of the Ellsberg break-in when he returned from a vacation on Cape Cod and that was a few days after the event.

19. Following a National Security Council meeting on

March 28, 1969, the President directed that several studies be conducted on alternative solutions to the Vietnam War. One alternative to be studied was a unilateral troop withdrawal. The study directive was issued on April 1, 1969 and on April 6, 1969, *The New York Times* printed an article by Max Frankel indicating that the United States was considering unilateral withdrawal from Vietnam. At the time the article was published no official discussions regarding this alternative had been taken up with the government of South Vietnam.

20. On June 3, 1969, shortly after the decision had been reached to begin withdrawal of troops from Vietnam, George Sherman reported the decision in *The Evening Star* and indicated that it would be made public following the President's meeting with South Vietnam's President Nguyen Van Thieu. Hedrick Smith made a similar advance release in the June 4, 1969, *New York Times*. The decision to begin withdrawing troops had not been formally discussed with the South Vietnamese at the time of the disclosure.

21. In early March, 1969, a decision was reached to conduct B-52 raids into Cambodia. These raids were conducted secretly to maintain the tacit approval of neutralist Cambodian Prince Norodom Sihanouk.

However, on May 6, 1969, William Beecher accurately reported these raids in *The New York Times* jeopardizing the relationship with Prince Sihanouk.

22. In the May 1, 1969, *New York Times*, William Beecher reported the five strategic options under study for the SALT negotiations with close estimates of the costs for each option. These options were published before they were considered by the National Security Council.

23. On June 18, 1969 in *The New York Times*, Peter Grose reported on the secret official estimates for the first strike capabilities of the Soviet Union. This was published during the SALT negotiations thereby prematurely revealing the intelligence basis upon which the United States was developing its SALT position.

24. Hedrick Smith, in the June 3, 1969, edition of *The New York Times*, reported that the President had determined to remove nuclear weapons from Okinawa in the upcoming negotiations with Japan over the reversion of the Island. The article stated that the President's decision had not yet been communicated to Japan, thereby preempting the possibility of obtaining a more favorable outcome during the negotiations.

25. Morton Halperin was chief of the National Security Council planning group and therefore was one of several persons having access to the information which leaked. In

this position and during his tenure as consultant to the NSC, Dr. Halperin received extensive exposure to classified information much of which remains confidential to this day. Dr. Halperin was removed from access to sensitive material regarding national security matters following publication of one of the Beecher articles in *The New York Times*.

(NOTE: There was no paragraph 26 in the notebook presented to the committee on the judiciary.)

27. A letter dated September 12, 1973 from Attorney General Elliot Richardson to the Senate Foreign Relations Committee referring to the placement of these seventeen national security wiretaps stated that "the Department of Justice scrupulously observes the law as interpreted by the courts."

28. There was clear legal authority on the legality of warrantless national security wiretaps at the time the seventeen wiretaps were conducted.

(NOTE: Objection has been raised by Congressman Seiberling that the entire paragraph is a conclusion rather than a statement of information within the rules of procedure of the committee.)

BOOK VIII: WHITE HOUSE USE OF INTERNAL REVENUE SERVICE

The following Statements of Information and related evidence are taken from Book VIII of the House Judiciary Committee publications. Book VIII outlines alleged White House misuse of the Internal Revenue Service and relates specifically to Section 1 of the Second Article of Impeachment.

1. On or about March 21, 1970 Special Counsel to the President Clark Mollenhoff sent a memorandum to H. R. Haldeman transmitting material on the taxes of Governor George Wallace's brother, Gerald Wallace. Mollenhoff has stated that he had been instructed by Haldeman to obtain a report from IRS on investigations relating to Governor George Wallace and Gerald Wallace; that he had been assured by Haldeman that the report was to be obtained at the request of the President; that he obtained the report from the IRS; and that Mollenhoff did not give a copy of the report to anyone other than Haldeman or discuss the substance of it with anyone else until after the appearance of an article on April 13, 1970 regarding confidential field reports, and IRS

investigation of charges of corruption in the Wallace Administration and the activities of Gerald Wallace. Former Commissioner of Internal Revenue Randolph Thrower has stated that an IRS investigation concluded that the material had not been leaked by the IRS or the Treasury Department. Thrower has stated that thereafter he and the IRS Chief Counsel met with Haldeman and Ehrlichman at the White House and discussed with them the seriousness of the leak and the fact that unauthorized disclosure of IRS information constituted a criminal act.

AFFIDAVIT

CLARK R. MOLLENHOFF, being first duly sworn, deposes and says:

(1) I was appointed Special Counsel to the President in July 1969. I remained in that position until June 1970, at which time I resigned from the White House staff.

(2) Because my responsibilities at the White House included investigation of allegations of corruption or mismanagement in government, I had authority from the President to periodically obtain certain tax returns from the IRS.

(3) Early in 1970 I was instructed by H. R. Haldeman to obtain a report from the IRS on its investigation of alleged illegal campaign contributions relating to the 1968 presidential campaign of Governor George Wallace and unreported income received by his brother, Gerald Wallace.

(4) I initially questioned Mr. Haldeman's instruction, but upon his assurance that the report was to be obtained at the request of the President, I requested the report of IRS Commissioner Randolph Thrower.

(5) On March 20, 1970 I received a report on the IRS investigation from Assistant IRS Commissioner Donald Bacon.

(6) On March 21, 1970, I delivered the report to Mr. Haldeman, on his assurance that it was for the President. I did not give a copy of the report to anyone else nor did I discuss the substance of it with anyone until after the appearance of a column by Jack Anderson.

(7) On April 13, 1970 a report appeared in Jack Anderson's column about the IRS investigation. Shortly thereafter, I was requested to meet with Messrs. Haldeman, Ehrlichman and Ziegler. At that meeting they accused me of having leaked the IRS report to the press. I denied having done so and told them that the only copy of the report had gone to Mr. Haldeman.

(8) Thereafter Commissioner Thrower questioned me about the leak. I informed him that I had delivered the only

copy of the report to Mr. Haldeman and had not leaked the information, that Mr. Haldeman had attempted to blame me for the leak, and that I believed that the leak had occurred at the highest White House level.

2. On September 21, 1970 White House aide Tom Charles Huston sent a memorandum to Haldeman transmitting a report on an investigation by the IRS Special Service Group of political activities of tax-exempt organizations. Huston discussed administrative action against the organizations and stated that valuable intelligence-type information could be turned up by IRS as a result of their field audits.

3. Former Commissioner of Internal Revenue Thrower has stated that during the summer of 1970 he was advised by Under Secretary of the Treasury Charles Walker that John Caulfield, head of security for the President's office, was interested in the position of Director of the IRS Alcohol, Tobacco and Firearms Division (ATF) and had the President's blessing and the support of top people at the White House. Thrower concluded that Caulfield was not qualified for the position. Thrower has stated that in November 1970 he was told by Walker that the White House wanted Caulfield to be considered for the position of Chief of the Enforcement Branch of ATF and that the White House wanted to take the Enforcement Branch out of ATF and have it report directly to Thrower rather than through the chain of command. Thrower has stated that he told Walker that Thrower would resign if Caulfield were appointed and the organizational changes were required. Thrower has stated that shortly thereafter he was advised that the White House would drop the matter.

4. Thrower has stated that in January 1971, having decided to submit his resignation as Commissioner of Internal Revenue, he attempted unsuccessfully through Treasury Secretary Kennedy and Attorney General Mitchell to arrange a meeting with the President to express his concern that any suggestion of the introduction of political influence into the IRS would be very damaging to the President and his administration as well as to the revenue system and the general public interest. Thrower has stated that he was told by the President's Appointment Secretary Dwight Chapin that the President had received Thrower's views from the Attorney General and did not feel a conference was necessary. Thrower thereupon submitted his resignation.

5. From June 24, 1971 through June 1972, members of Colson's staff circulated to various White House staff members names for and deletions from a list of political opponents. Dean has testified that the list was continually being

updated, and the file was several inches thick. Colson has stated that the list maintained by George Bell of his office was primarily intended for the use of the social office and the personnel office in considering White House invitations and appointments.

6. On July 20, 1971 John Dean wrote a memorandum to Ehrlichman's aide Egil Krogh attaching information compiled by John Caulfield regarding the Brookings Institution's tax returns and noting that Brookings received a number of large government contracts. Caulfield has testified that it was his impression that this was public information. On July 27, 1971 Dean sent a memorandum to Krogh to which was attached a carbon copy of Dean's July 20, 1971 memorandum on which the words "receives a number of large government contracts" were underscored and a marginal note by Haldeman stated that these should be turned off. Dean's July 27, 1971 memorandum stated that he assumed that Krogh was turning off the spigot.

7. Dean has testified that on August 16, 1971 he prepared a memorandum entitled, Dealing with our Political Enemies, which addressed the matter of how the Administration could use the available federal machinery against its political enemies. Among Dean's suggestions was that key members of the staff should determine who was giving the Administration a hard time, and that they develop a list of names — not more than ten — as targets for concentration. Dean has testified that to the best of his recollection the memorandum was sent forward to Haldeman and Ehrlichman for approval, disapproval or comment. Ehrlichman testified that he could not recall receiving any memorandum with respect to the enemies list from Dean or any other person in the White House.

8. On September 9, 1971 Colson sent Dean a memorandum stating that he had checked in blue those to whom he would give top priority. Dean testified that attached to Colson's memorandum was an opponents list memorandum from Bell dated June 24, 1971 and a document entitled "Opponent Priority Activity" containing the names and brief descriptions of 20 political opponents with check marks beside eleven of the names.

9. On or about September 14, 1971 Dean sent to Haldeman's aide, Lawrence Higby, a list of names Higby requested. Most of the names were the same as those checked by Colson on the list attached to the September 9, 1971 memorandum discussed in the preceding paragraph. Dean testified that upon a request from Haldeman that he wanted to nail this down as to the 20, or the minimum number with

whom they could do something, Dean sent the list to Higby for Haldeman's final review. On several occasions thereafter Dean received names for the enemies project from Higby and Strachan, also an aide of Haldeman. Dean testified that he also received a list of McGovern campaign staff prepared at Ehrlichman's direction by CRP Director of Ballot Security Murray Chotiner. Dean has testified that the lists were principally used by Colson and Haldeman and that he did not know what they did with them. Haldeman has testified that enemies lists or opponents lists were used for withholding White House courtesies and invitations from those who had expressed opposition of Administration policies.

10. On September 22, 1971 John Caulfield wrote a memorandum regarding plans for scheduling Lawrence Goldberg to function in the Jewish area at the Committee for the Re-election of the President. Caulfield stated that Goldberg was actively engaged in Anti-Defamation League activities and that consideration should be given to a potential question of loyalty. On October 6, 1971 Caulfield sent a memorandum to Dean attaching lists of charitable contributions from Goldberg's tax returns and stating that it postured an extremely heavy involvement in Jewish organizational activity. Caulfield also stated that Attorney General Mitchell should be discreetly made aware in this regard. Caulfield has testified that he obtained information on Goldberg's financial status from IRS Assistant Commissioner (Inspection) Vernon Acree and that the purpose of obtaining the information was to determine whether Goldberg was financially solvent and therefore able to assume a campaign position at CRP.

11. On or about September 30, 1971 Caulfield sent a memorandum to Dean reporting on IRS tax audit information about Rev. Billy Graham. Caulfield testified that he obtained the information from Assistant Commissioner Acree. On October 1, 1971 Higby sent a copy of Caulfield's memorandum to Haldeman with a transmittal slip bearing the hand-written notation, "Can we do anything to help," below which is Haldeman's handwritten notation, "No, it's already covered." Dean has testified that the President had asked that the IRS be turned off on friends of his.

12. On or about October 6, 1971 Caulfield sent a memorandum to Dean transmitting information about tax audits of John Wayne and eight other entertainers and former entertainers which Caulfield had instructed the IRS to furnish. Caulfield has testified that he obtained the information from Acree.

13. From October 6 through October 13, 1971 Newsday published installments of an article on C. G. Rebozo. Dean

has testified that after the article was published he was instructed by Haldeman that one of the authors of the article should have some problems. Dean and Caulfield discussed procedures to institute an audit of Robert Greene, a Newsday reporter who had written the article. Caulfield has testified that he discussed the request with Acree who told Caulfield that an audit could be instigated by use of an anonymous letter. Caulfield has testified that Acree later informed him that the procedure was followed. The staff of the Joint Committee on Internal Revenue Taxation has stated that Greene was not audited by the IRS but was subsequently audited by New York State tax authorities on the basis of information supplied under the Federal-State exchange program, but that the staff believes that the audit was unrelated to Greene's being classified as a White House enemy.

14. Dean has testified that he received requests from Haldeman to have audits commenced on certain individuals. Haldeman has testified that he could recall no specific requests but that information that had come to the attention of the White House or information that appeared to indicate a reason for an audit may have been referred by the White House to the IRS. Caulfield has testified that some time after Dean's request for an audit of Greene, Dean met with Caulfield and Acree and directed that full audits be conducted of three or four other individuals. Caulfield has testified that he and Acree decided not to conduct the audits and that so far as he knew no audits were conducted of any individuals.

15. On October 15, 1971 Caulfield wrote a memorandum to Dean recommending that background information obtained from the FBI about the producer of a motion picture derogatory to the President be released to the media and that discreet IRS audits be instituted on the producer, the distributor of the film and a related corporation. Caulfield testified that Dean requested he run an FBI name-check and that, at Caulfield's direction, Anthony Ulasewicz conducted a "pretext inquiry" at the offices of the film's distributor. On October 20, 1971 Caulfield sent a memorandum to Dean reporting on a pretext interview of the film's distributor and recommending that because the financial handling and distribution of the film was in the hands of amateurs, any actions against the producer, including background information and IRS capability, be carefully weighed and well hidden.

16. Prior to November 7, 1971 a talking paper and memorandum were prepared with respect to making the IRS politically responsive. Dean has testified that he and Caulfield prepared the documents for Haldeman's use during a meeting with either the Secretary of the Treasury or the Commission-

er of Internal Revenue. Haldeman has testified that he could not recall either seeing the briefing memorandum or having any specific conversation with the Secretary of the Treasury.

(Memorandum)

(A) To Accomplish: Make IRS politically responsive. Democrat Administrations have discreetly used IRS most effectively. We have been unable.

(B) The Problem: Lack of guts and effort. The Republican appointees appear afraid and unwilling to do anything with IRS that could be politically helpful. For example:

We have been unable to crack down on the multitude of tax exempt foundations that feed left wing political causes.

We have been unable to obtain information in the possession of IRS regarding our political enemies.

We have been unable to stimulate audits of persons who should be audited.

We have been unsuccessful in placing RN supporters in the IRS bureaucracy.

(C) HRH should tell the Soc.

Walters must be more responsive, in two key areas: personnel and political actions.

First. Walters should make personnel changes to make IRS responsive to the President. Walters should work with Fred Malek immediately to accomplish this goal. (NOTE: There will be an opening for a General Counsel of IRS in the near future — this should be a first test of Walters' cooperation).

Second. Walters should be told that discreet political action and investigations are a firm requirement and responsibility on his part. John Dean should have direct access to Walters, without Treasury clearance, for purposes of the White House. Walters should understand that when a request comes to him, it is his responsibility to accomplish it — without the White House having to tell him how to do it!

A knowledgeable source at IRS was contacted and given a hypothetical situation in which the White House made a request for an IRS audit of a group of specific individuals having the same occupation. This source advised that IRS procedures would require that such request be handled by Assistant Commissioner Donald Bacon.

It is known that Bacon is a liberal Democrat holdover who has been continually identified with anti-Nixon intrigues at IRS within the past two years.

The source suggested that a priority target be established within the group with preference given to one residing in the New York area. He further stated such target could discreet-

ly be made subject to IRS audit without the clear hazard for a leak traceable to the White House as postured above.

I.R.S. Talking Paper Background

(A) The Bureaucracy

IRS is a monstrous bureaucracy, which is dominated and controlled by Democrats. The IRS bureaucracy has been unresponsive and insensitive to both the White House and Treasury in many areas.

In brief, the lack of key Republican bureaucrats at high levels precludes the initiation of policies which would be proper and politically advantageous. Practically every effort to proceed in sensitive areas is met with resistance, delay and the threat of derogatory exposure.

(B) Administration Appointees

Randolph Thrower became a total captive of the democratic assistant commissioners. In the end, he was actively fighting both Treasury and the White House.

Johnnie Walters has not yet exercised leadership. Unevaluated reports assert he has been either reluctant or unwilling to do so.

Walters has appointed as his deputy, William Loeb, career democrat from Georgia. Loeb has asserted his democratic credentials in staff meetings according to reliable sources.

Walters appears oversensitive in his concern that IRS might be labelled "political" if he moves in sensitive areas (e.g. audits, tax exemptions).

During the Democrat Administrations, IRS was used discreetly for political purposes, but this has been unavailable during this Administration.

Suggestions:

Walters should be told to make the changes in personnel and policy which will give the Administration semblance of control over the hostile bureaucracy of IRS. Malek should supply recommendations.

Walters must be made to know that discreet political actions and investigations on behalf of the Administration are a firm requirement and responsibility on his part.

We should have direct access to Walters for action in the sensitive areas and should not have to clear them with Treasury.

Dean should have access and assurance that Walters will get the job done properly!

17. In a Political Matters Memorandum dated December 2, 1971 Strachan reported to Haldeman that Mitchell and Dean had discussed the need to develop a political intelli-

gence capability. Strachan stated that Sandwedge had been scrapped and that instead Gordon Liddy would become general counsel to CRP effective December 6, 1971. Strachan stated that Liddy would handle political intelligence as well as legal matters and would also work with Dean on the political enemies project.

18. In early 1972 John Dean sent a memorandum to Haldeman, Ehrlichman, Klein, Colson and Ziegler, with a carbon copy to Mitchell, stating that an article by a journalist about a campaign fundraiser was scheduled for publication the following day. At this time an unsigned memorandum was prepared containing personal information about the journalist and describing his financial affairs. It stated that during recent years the journalist had not reported any personal income derived from the operation of a corporation in which he had an interest. It also stated that certain facts suggested to IRS professionals that an audit might resultingly be in order. The memorandum also stated that because of the sensitivities of the ongoing inquiry, no audit should be initiated unless directed.

19. On June 12, 1972 Colson sent a memorandum to Dean stating that Colson had received a well informed tip that there were discrepancies in the tax returns of Harold Gibbons, a vice president of the Teamsters Union. Colson stated that Gibbons was an all out enemy and asked that Dean please see if this one could be started on at once. Dean has testified that he put the memorandum in his file and that it remained there.

20. Former Commissioner of Internal Revenue Walters has stated that during the summer of 1972 he was asked by Treasury Secretary Shultz to check on a report by John Ehrlichman that Democratic National Committee Chairman Lawrence O'Brien had received large amounts of income which might not have been reported properly. Walters has stated that he reported to Shultz on the IRS's examination of O'Brien's returns for 1970 and 1971. Walters has stated that Ehrlichman was not satisfied with the report on the status of O'Brien's returns and that because of Ehrlichman's inquiries O'Brien was interviewed during the summer of 1972. Walters has stated that Ehrlichman was not satisfied with the interview and that he told Shultz he needed further information about the matter. Ehrlichman has testified that he had learned from a sensitive case report that the IRS was investigating O'Brien and that he called Shultz to complain that the IRS was delaying the audit until after the election.

21. On or about August 29, 1972 Shultz, Walters and Assistant to the IRS Commissioner Roger Barth telephoned

Ehrlichman to report on the IRS investigation of Lawrence O'Brien. Shultz informed Ehrlichman that the IRS had closed the investigation. Ehrlichman complained to Walters that the IRS had been stalling the audit and he told Walters what a bad job he had done.

22. Walters stated that on September 11, 1972 he went to Dean's office. Dean gave Walters a list of McGovern staff members and campaign contributors and requested that the IRS begin investigations or examinations of the people named on the list. Walters' notes of the meeting state that J.E. (John Ehrlichman) asked to make up the list to see what information could be developed and that Dean had not been asked by the President to have this done and did not know whether the President had asked directly that any of this be done. Walters has stated that he advised Dean that compliance with the request would be disastrous for the IRS and for the Administration and that he would discuss the matter with Secretary Shultz and would recommend to Shultz that the IRS do nothing with respect to the request.

23. Walters has stated that on September 13, 1972 he discussed with Secretary Shultz the list given him by Dean, showed Shultz the list and advised Shultz that he believed they should not comply with Dean's request to commence examination or investigation of the people named on the list. Shultz told Walters to do nothing with respect to the list and Walters put it in his office safe. On July 11, 1973 Walters turned the list over to the Joint Committee on Internal Revenue Taxation. On December 20, 1973 the staff of the Joint Committee issued a report stating that it found no evidence that the returns of any persons on the list were screened as a result of White House pressure.

24. On September 15, 1972 from about 5:23 until about 5:27 p.m. the President met with Haldeman and discussed, among other things, Dean's working through IRS. At about 5:27 p.m. Dean joined the meeting and from about 5:27 to about 6:00 p.m. the President, Haldeman and Dean had a discussion which did not refer specifically to the IRS. The Committee has received tape recordings of these conversations.

Transcript of September 15, 1972 meeting prepared by the Impeachment Inquiry Staff.

PRESIDENT: (Unintelligible)

HALDEMAN: John, he is one of the quiet guys that gets a lot done. That was a good move, too, bringing Dean in. But it's —

PRESIDENT: It — He'll never, he'll never gain any ground for us. He's just not that kind of guy. But, he's the kind that enables other people to gain ground while he's making sure that you don't fall through the holes.

PRESIDENT: Oh. You mean —

HALDEMAN: Between times, he's doing, he's moving ruthlessly on the investigation of McGovern people, Kennedy stuff, and all that too. I just don't know how much progress he's making, 'cause I —

PRESIDENT: The problem is that's kind of hard to find.

HALDEMAN: Chuck, Chuck has gone through, you know, has worked on the list, and Dean's working the, the thing through IRS and, oh, in some case, I think, some other (unintelligible) things. He's — He turned out to be tougher than I thought he would, which is what

PRESIDENT: Yeah. —

25. From approximately 6:00 p.m. to approximately 6:17 p.m. on September 15, 1972 the President, Haldeman and Dean continued their meeting. The Committee has not received a tape recording of this portion of the conversation. Haldeman and Dean have testified that the September 15, 1972 meeting there was a discussion of taking steps to overcome the unwillingness of the IRS to follow up on complaints. According to a memorandum by SSC Minority Counsel Fred Thompson, Special Counsel to the President, J. Fred Buzhardt has stated that during the September 15, 1972 meeting Dean reported on the IRS investigation of Lawrence O'Brien. On May 28, 1974 the Watergate Special Prosecutor moved that the recording of this portion of the conversation be turned over to the appropriate grand juries on the basis that the recording was relevant to alleged White House attempts to abuse and politicize the IRS, including unlawfully attempting in August and September 1972 to have the IRS investigate Lawrence O'Brien. On June 12, 1974 Judge Sirica granted the motion and ordered that the recording of the conversation from 6:00 to approximately 6:13 p.m. be made available to the Special Prosecutor.

26. Walters has stated that on or about September 25, 1972 Dean telephoned him and inquired as to what progress had been made with respect to the list of McGovern campaign workers and contributors which he had given to Walters on September 11, 1972. Walters has stated that he informed Dean that no progress had been made; that Dean asked if it might be possible to develop information on fifty, sixty or seventy of the names; and that Walters responded that, although he would reconsider the matter with Secretary Shultz, any activity of this type would be inviting disaster.

Walters has stated that on or about September 29, 1972 he discussed Dean's request with Shultz and that he and Shultz agreed that nothing be done with respect to the list. Walters has stated that he did not furnish any name or names from the list nor request any IRS employee or official to take any action with respect to the list.

27. On March 13, 1973 the President met with Haldeman and Dean. During the conversation the President and Dean discussed, among other things, obtaining information from the IRS.

Transcript of March 13, 1973, Meeting Prepared by the Impeachment Inquiry Staff.

HALDEMAN: Good. (Unintelligible) friends have you got (unintelligible)

DEAN: That's right.

PRESIDENT: Thank God.

HALDEMAN: Why has there never been (unintelligible) come up and did it before?

PRESIDENT: Just wasn't enough stuff. They couldn't get anybody to pay any attention. For example, the investigations were supposed to have been taken for the thirty-four million-odd contributed to McGovern in small — Oh Christ, there's a lot of hanky-panky in there, and the records used on it are just too bad to find out anything.

DEAN: That's one of the problems that he has—

PRESIDENT: That's the problem, and can that be an issue?

DEAN: That will be an issue. That we have — There is a crew working that, also.

PRESIDENT: Do you need any IRS (unintelligible) stuff?

DEAN: Uh — Not at the —

WAITER: Would you care for some coffee?

DEAN: No, thank you, I'm fine. Uh, there is no need at this hour for anything from IRS, and we have a couple of sources over there that I can go to. I don't have to fool around with Johnnie Walters or anybody, we can get right in and get what we need.

The Debate on Article II

MONDAY, JULY 29, 1974
FIRST SESSION

Chairman: The Committee will come to order.

I would now call upon the Clerk to read proposed Article II. The Clerk will read.

Clerk: Article II.

In his conduct of the Office of the President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office and to ...

Hungate: Mr. Chairman, I have a substitute.

Chairman: The gentleman from California is recognized on a point of order and will state his point of order.

Wiggins: Mr. Chairman, my point of order is that Article II fails to state an impeachable offense under the Constitution. May I be recognized on my point of order?

Chairman: The gentleman is recognized on his point of order.

Wiggins: Mr. Chairman and members of the Committee, it is quite clear from a full reading of proposed Article II that the gravamen of that article is abuse of power on the part of the President of the United States...

The question, ladies and gentlemen, is whether an abuse of power falls within the meaning of the phrase "high crimes and misdemeanors," since we can impeach on no other basis. If it does not, then my point of order should be sustained. If it does, then we should proceed with the consideration of that article.

* * * * *

My problem is this, just what is abusive conduct? What does it mean? I suggest that that is an empty phrase, having meaning only in terms of what we pour into it. It must reflect our subjective views of impropriety as distinguished from the objective views enunciated by society in its laws.

It ought to be clear to this Committee, a Committee of lawyers, that such a phrase as "abuse of power" is sufficiently imprecise to meet the test required by the Fifth Amendment. In my view, Mr. Chairman, the adoption of such an article would imbed in our constitutional history for the first time, for the very first time; the principle that a President may be impeached because of the view of Congress

that he has abused those powers, although he may have acted in violation of no law.

If that is true, then we truly are ratifying the statement attributed to the now Vice President that impeachment means exactly what the Congress says it means at a given moment. By declaring punishable conduct which was not illegal when done, this Congress is raising the issue of a Bill of Attainder, contrary to the express terms of the Constitution. The argument of ex post facto legislation is now before us. If we are to declare punishable that conduct which is not illegal under our laws, in so doing, Mr. Chairman, we ought to recognize the momentous nature of such a decision, because we are taking a step toward a parliamentary system of government in this country rather than the constitutional system which we now have. We are in effect saying, Mr. Chairman, that a President may be impeached in the future if a Congress expresses no confidence in his conduct, not because he has violated the law, but rather because that Congress declares his conduct to be abusive in terms of their subjective notions of propriety.

* * * * *

In terms of the future, Mr. Chairman, what standard are we setting for the Presidents in the future? How will any future President know precisely what Congress may declare to be an abuse, especially when they have failed to legislate against the very acts which they may condemn.

I think it is holding up to a future President an impossible standard that he must anticipate what Congress may declare to be abusive in the future.

* * * * *

Danielson: In my opinion, Mr. Chairman, this is possibly, probably ... I can make that stronger ... it is certainly the most important article that this Committee may pass out.

The offense charged in this article is truly a high crime and misdemeanor within the purest meaning of those words as established in Anglo-American jurisprudence over a period of now some 600 years. The offenses charged against the President in this article are uniquely Presidential offenses. No one else can commit them. You or I, the most lowly citizen, can violate any of the statutes in our criminal code. But only the President can violate the oath of Office of the President. Only the President can abuse the powers of the Office of the President.

* * * * *

Hungate: I would think that if only one instance of improper conduct, and it perhaps could be quite serious, I do

not know that we would be here today.... I say again if only one violation had occurred, I would doubt that we should be here. Men are human. Humans are frail, But I think we discuss and consider here and see here a consistent disregard of the law.

To give an example... if a man is driving in his car and he crosses the center line, that is not grounds for a whole lot of punishment, taking his license or thoroughly incarcerating him, but if he crosses the center line fifteen times every mile he drives or if he insists on straddling the center line all the time, then I think we find action has to be taken.

* * * * *

Hutchinson: The wording of the proposed Article II raises a number of serious questions which I hope will be addressed by its proponents during the course of this debate. While I strenuously dispute as a matter of fact that the evidence establishes that the President has repeatedly engaged in unconstitutional and unlawful conduct, I am curious as to what the drafters of this article perceive to be the legal significance of the allegation that such acts have been done repeatedly.

What is the gravamen of the offense charged in this article: the supposed repetition of misconduct or the specific instances of it which are alleged?

Would any of these individual allegations standing alone support an Article of Impeachment? Or do they only amount to impeachable conduct when considered in the aggregate? If some would stand alone and others could not, tell us which is which. How many of these allegations must a member believe to be supported by the evidence before he would be justified in voting for the entire article?

* * * * *

McClory: I would like to discuss generally this proposed Article of Impeachment. It seems to me that this really gets at the crux of our responsibilities here. It directs our attention directly to the President's constitutional oath and his constitutional obligation. There is nothing mysterious about this, and there is nothing evil and malicious about it. It directs the attention directly to this responsibility that is and has been reposed in the President.

This certainly is no Bill of Attainder. We are not thinking this up as an offense and then charging the President with a violation of it. We are calling the President's attention to the facts that he took an oath of office, and that he had in his oath of office a solemn obligation to see to the faithful execution of the laws.

This is quite different and distinct from the elements of criminality that are involved in Article I charging the President with a conspiracy, and with all kinds of criminal acts of misconduct and obstruction of justice and so on, an article which I did not support because I do not believe the facts support that kind of charge.

* * * * *

Wiggins: Thank you, Mr. Chairman. I have an amendment at the desk.

I ask unanimous consent, Mr. Chairman, that my amendment be deemed to apply to the language in Subparagraphs 1 and 3, because those are exactly the same words, and as you know, that new language was read in as an addition here just a few moments ago.

Chairman: The Clerk will read the amendment.

Clerk: Amendment by Mr. Wiggins. In Subparagraph 1 after the word "has," strike the words "acting personally and through his subordinates and agents" and add the following: "personally and through his subordinates and agents acting with his knowledge or pursuant to his instructions."

Wiggins: Mr. Chairman, I believe my intent is evident from the words used, and I merely am trying to avoid any possible ambiguity created by the language which is now in Subparagraph 1 and Subparagraph 3.

Going back to the introductory words in Article II it states, in essence, Richard Nixon has repeatedly engaged in conduct, etcetera. It makes it clear that we are talking about Richard Nixon's acts, and yet, when we move to Subparagraph 1 we deviate from that standard and we say, as presently proposed, that he acted personally and through his subordinates and agents.

I have no quarrel with impeaching President Nixon by reason of the acts of his subordinates and agents, so long as we know that we are talking about those acts of his subordinates and agents which were done with his knowledge or pursuant to his instructions. And we are not seeking to impeach the President vicariously by reason of the acts of others about which he had no knowledge, and contrary perhaps to his instructions.

* * * * *

Cohen: Mr. Wiggins, under your proposal that would make it personally and through his subordinates and agents acting with his knowledge or pursuant to his instructions, would that also cover such situations where his agents may have acted without the President's personal knowledge in advance, but such acts were thereafter ratified or condoned by the President?

Wiggins: Yes. I would not necessarily exclude that. I realize that a President must of necessity act through subordinates, and that the acts of subordinates may not be personally known to the President. But, so long as those acts are pursuant to his instructions, or perhaps policy, to use a word that has been used around here, or ratified and condoned by him as his acts, then I have no objection to attributing them to the President.

Cohen: So, if he acquired knowledge thereafter and ratified in effect the prior acts, that would be within the scope of your amendment. Thank you.

Railsback: What worries me about this, the President, in some cases, perhaps had knowledge not initially, perhaps, but learned of improper activities and saw fit to either condone or acquiesce in such activities, and what I am wondering is if it is the intent of his amendment, and again let's make it very clear, is it the intent of your amendment to rule out that kind of what I believe is serious misconduct?

Wiggins: It is not my own intent to rule it out, but I do not wish to say I embrace it. I will, as you said yesterday, let the words speak for themselves.

Seiberling: I would like to ask the gentleman if his amendment would cover a situation such as we have testimony on that the President would give instruction sometimes saying now, I want you to get this done, but I don't care how you do it, don't bother me with the details. Would that be sufficient to cover the instructions under the gentleman's amendment?

Wiggins: Well, I think the instructions are subject to interpretation. I know the incident to which the gentleman refers, and I could not conceive that the President was by that instruction authorizing the doing of an illegal act. So long as the act is consistent with a reasonable interpretation of his policy and direction, I have no quarrel with attributing that conduct to the President.

Brooks: Mr. Chairman, I oppose the Gentleman's motion... The evidence that we have gathered clearly establishes that Richard M. Nixon and his agents sought and obtained confidential tax information from the Internal Revenue Service in a manner unauthorized by law and for unlawful purposes. Specifically he and his subordinates made repeated attempts to influence the selection of citizens to be targeted for audit and other special action by the Internal Revenue Service.

In a sworn affidavit to this Committee, Johnnie Walters, former IRS Commissioner, stated that in the summer of 1972 John Ehrlichman requested the IRS to check out the income

tax returns of Democratic National Committeeman Lawrence O'Brien. The IRS checked O'Brien's returns and conveyed the relevant information to Ehrlichman through then Secretary of the Treasury Shultz. Ehrlichman was not satisfied and because of his demands, O'Brien was interviewed on August 17, 1972. The IRS furnished a copy of the O'Brien conference report to Secretary Shultz. A short time later Shultz informed Walters that Ehrlichman was still not satisfied. Walters told Shultz that there was nothing else the IRS could do.

On August 29, 1972, in a joint telephone call to Ehrlichman by Secretary Shultz, Walters and his assistants IRS Commissioner Roger Barth, Ehrlichman was told that O'Brien's returns were closed, that there was nothing further for IRS to do.

Ehrlichman then told Walters... what Ehrlichman said on page 235 was, I am "goddamned tired of your foot dragging tactics." And then when Ehrlichman was so interested in the IRS status of O'Brien's operation, in testimony before the Watergate Committee Ehrlichman arrogantly stated the reason that... he wanted something turned up before the election. Unfortunately it didn't materialize.

On September 11, 1972, John Dean gave Walters a list of Democratic presidential nominee staff members and campaign contributors, instructing the IRS to begin investigations or examinations of the people named on the list. Walters testified that he advised Dean that compliance with the request would be disastrous for the IRS and for the Administration, and that he would recommend to Shultz that the IRS do nothing with the request.

Four days later, H.R. Haldeman and Mr. Nixon, met and discussed among other things Dean's working through the IRS.

Now, later Dean joined the President and Haldeman and continued their meetings. We have not received a tape recording of this portion of the conversation but Dean testified that at that meeting there was a discussion of the unwillingness of the IRS to follow up on the White House directive.

In his testimony the following exchange took place between Mr. Doar and Mr. Dean:

Doar: "Did you discuss your assignment with respect to the IRS with the President during your meeting on September 15?"

Dean: "I am not sure how directly or specifically it came up. But there was indeed a rather extended discussion with the President on the use of IRS. He made some rather specif-

ic comments to me which in turn resulted in me going back to Mr. Walters again."

Doar: "When you say the use of IRS, what are you talking about?"

Dean: "Well, as I recall the conversation, we were talking about the problems of having IRS conduct audits and I told him that we hadn't been very successful at this because Mr. Walters had told me that he just didn't want to do it. I did not, I did not push him. As far as I was concerned, I was off the hook. I had done what I had been asked. I related this to the President and he said . . . and he said something to the effect, well, if Shultz thinks he has been put over there to be some sort of candy ass he is mistaken and if you have got any problems you just come tell me and I will get it straightened out."

* * * * *

Sandman: Haldeman directed Mollenhoff. It is my time. That does not say that the President did it, it says that Haldeman does. That was in 1970.

The next thing that you have here on page 2 is John Caulfield, a member of Dean's staff, he did something at the request of Haldeman. It does not say at the request of the President...

And then you have another one here in the spring of '72, Ehrlichman wanted some information on O'Brien, but there is nothing in the info in front of me here that was handed to me by the staff that that involves the President...

Now, in addition to that, the biggest one of all that you are relying upon, apparently, is the conversation of September 15th, 1972, where if you listen to that tape there is no question that the President is extremely disturbed on what Dean is telling him, and it is there that he explodes about Shultz. And these are ugly words; taken by themselves, they are terrible. But, the important thing about that conversation, September 15th, 1972, there is no proof that has been presented by this Committee or any other committee that shows that the President followed that up by talking to Shultz or anyone else.

And in addition to that, why don't we for the first time admit that not a single audit was made on a single soul on that list? This is important. This again is why you would not agree on specifics...

You are entirely wrong and you know it. This should be adopted.

Cohen: Mr. Sandman ... failed to state ... one very important thing, and that is the question of ratification. And I notice that the gentleman from California was rather reticent

about expressing this word "ratification" in his proposed amendment. ...for example, we do have direct evidence before this Committee, taken before this Committee and taken by John Dean, that on September 11th he did have a conversation with the Director of the Internal Revenue Service during which time he presented a list of political enemies for the purpose of having those enemies audited. Now, there is no evidence before this Committee, in my opinion, that would justify saying the President knew in advance of Mr. Dean's activities.

However, on September 15 the conversation to which Mr. Sandman just referred to, we do have direct evidence that the President was, indeed, interested in having this matter pursued. Mr. Sandman forgot to indicate that or failed to point out, I should say, that we were missing 17 minutes of this September 15 tape which was not presented to the Committee, which we have subpoenaed. This is the alleged portion of the tape, according to Mr. Dean, whereby the President directed Dean to go back and see George Shultz, and if he did not get cooperation to let him know.

* * * * *

Now, the question is, is Dean credible? Well, we have direct evidence from the Internal Revenue Commissioner who testified before the Senate Select Committee that, indeed, Dean did come back to him on September 26th, just several days thereafter his conversation with the President, presenting a reduced list and again asking for audits.

Now, I suggest and submit to this Committee that the President's activities on September 15 would, indeed, constitute a ratification of the prior act, which would make him responsible for such activities.

* * * * *

Hogan: I agree with my colleagues who say that we cannot impeach the President for the wrongdoing of his aides. I have said so myself...

We have his words on record, but one of the strongest things of personal involvement to me is when the Department of Justice files briefs in the Ellsberg case and says that there is no record of any wiretaps or any overheard conversations of Ellsberg. The reason they filed those briefs is because it was not in the files of the FBI.

And why was it not in the files of the FBI? Because the Assistant Attorney General, Mardian, flew to San Clemente and personally discussed the matter with the President, not his aides, personally with the President, and he said what shall I do with these records, and the President said deliver them all to the White House. And Mr. Mardian testified that

he delivered them to the Oval Office. When he was asked, well, to whom did you deliver them, he said, I would rather not say. Well, who sits in the Oval Office except the President? They were then given to Ehrlichman, and Ehrlichman kept them in his files outside of the records of the Department of Justice.

MONDAY, JULY 29, 1974

SECOND SESSION

Chairman: The Committee will come to order.

Chairman: The question occurs now on the amendment offered by the gentleman from California. All those in favor of the amendment please signify by saying aye.

(Chorus of aye)

Chairman: All those opposed?

(Chorus of no)

The noes appear to have it.

Chairman: The Clerk will call the roll. All those in favor of the amendment of the gentleman from California please signify by saying aye. All those opposed, no. The Clerk will call the roll.

The Vote On Amendments To Sections 1 and 3

DEMOCRATS

Donohue nay
Brooks nay
Kastenmeier nay
Edwards nay
Hungate nay
Conyers nay
Eilberg nay
Waldie nay
Flowers nay
Mann nay
Sarbanes nay
Seiberling nay
Danielson nay
Drinan nay
Rangel nay
Jordan nay
Thornton nay
Holtzman nay
Owens nay
Mezvinsky nay
Rodino nay

REPUBLICANS

Hutchinson aye
McClory nay
Smith aye
Sandman aye
Railsback nay
Wiggins aye
Dennis aye
Fish nay
Mayne nay
Hogan nay
Butler nay
Cohen nay
Lott absent
Froelich aye
Moorhead aye
Maraziti aye
Latta aye

Clerk: Nine members have voted aye, 28 members have voted no.

Chairman: And the amendment is not agreed to.

* * * * *

Clerk: Amendment by Mr. Wiggins. In the Hungate Substitute, strike from Subparagraph 4 the words "and concerning other matters."

Wiggins: Ladies and gentlemen of the Committee, this raises once again the question which was debated at some length concerning specificity. I call your attention to the wording of Subparagraph 4. It charges the President with failing to take care that the laws were faithfully executed by failing to act in two respects. One, with respect to the unlawful entry into the headquarters of the Democratic National Committee, and two, with respect to other matters.

It is my view, Mr. Chairman, that this pushes beyond all reason the desire, apparent desire on the part of the majority to not specify with particularity that conduct which they condemn. I can think of nothing more vague nor uncertain than the language "concerning other matters."

McClory: Mr. Chairman, I would like to speak in opposition to the amendment for this reason. It strikes me that the break-in of the Democratic Headquarters is only part and in my opinion only a small part of the misdeeds, the misconduct which is attributable to those aides and assistants of the President...

For one thing, certainly the break-in of Dr. Fielding's office and the events surrounding that are far more reprehensible in my opinion. The Watergate — the break-in at the DNC is a political matter but the other is unrelated to any political campaign...

Now, it is possible that some other — some other appropriate language which would cover this would be adequate instead of just the blanket phrase "other matters."

* * * * *

Hungate:...as we have said earlier, the doctrine of impeachment cannot really be very narrowly confined. It is as broad as the king's imagination. It has to be. If I can define it closely enough, there will be somebody to figure a way around it...

* * * * *

McClory. Mr. Chairman, I have a perfecting amendment at the desk.

Chairman: The gentleman is recognized. The Clerk will read the perfecting amendment.

Clerk: Amendment by Mr. McClory.

In the Hungate Substitute strike from Subparagraph 4 the word "matters" and insert in lieu thereof the following: "unlawful activities."

McClory: Mr. Chairman, all that this perfecting amendment does is to delete the word "matters" and substitute the words "unlawful activities." What we are talking about here really are unlawful activities of those who were employed in the White House, and who operated during this period prior to and subsequent to the Democratic National Headquarters break-in, and who were involved in all of these other unlawful activities to which we have made reference, the burglary of Dr. Fielding's office, the perjury with respect to Mr. Kleindienst's confirmation and a number of other matters to that which we are aware of.

Dennis: I was just wondering whether the gentleman from Illinois felt that to make it read "concerning other unlawful activities" instead of "concerning other matters" really advanced us very far as far as specificity is concerned which I had understood the gentleman was concerned with a moment ago.

McClory: Yes. I will say it does because we are not talking about other matters, other kinds of conduct that are not unlawful or anything that isn't in the nature of a criminal act or some serious wrongdoing, and so if we say it is unlawful activity which we are concerned with I think it apprises the President of what is involved.

Hungate: I am happy to indicate on my part I am pleased to accept the perfecting amendment of the gentleman from Illinois.

Chairman: The question occurs on the amendment offered by the gentleman from Illinois, Mr. McClory, as a perfecting amendment. All those in favor please say aye.

(Chorus of aye)

Chairman: All those opposed?

(Chorus of no)

Chairman: The ayes appear to have it. The ayes have it.

McClory: I think that the language would be confusing if we accepted the additional language offered by the gentleman from Ohio.

Seiberling: Well, if that is the interpretation in the record, I think it does clarify matters, but the mere words standing alone, "other unlawful activities," I do not think are sufficiently clear.

McClory: If the gentleman would yield further, the "other unlawful activities" refers to the close subordinates and I think those are the only ones we want to direct our attention to.

Seiberling: All right. Well, I will ask unanimous consent to withdraw my perfecting amendment.

McClory: Without objection.

Chairman: Without objection, the amendment is withdrawn.

* * * * *

Chairman: The question is still on the amendment of the gentleman from California. All those in favor of the amendment please signify by saying aye.

(Chorus of aye)

Chairman: All those opposed.

(Chorus of no)

Chairman: The noes appear to have it.

Sandman: Mr. Chairman, the yeas and nays.

Chairman: Call of the yeas and nays is demanded and the Clerk will call the roll.

The Vote On An Amendment to Section 4

DEMOCRATS

Donohue nay
Brooks nay
Kastenmeier nay
Edwards nay
Hungate nay
Conyers nay
Eilberg nay
Waldie aye
Flowers aye
Mann nay
Sarbanes nay
Seiberling nay
Danielson nay
Drinan nay
Rangel nay
Jordan nay
Thornton nay
Holtzman nay
Owens nay
Mezvinsky nay
Rodino nay

REPUBLICANS

Hutchinson aye
McClory nay
Smith aye
Sandman aye
Railsback aye
Wiggins aye
Dennis aye
Fish nay
Mayne aye
Hogan nay
Butler nay
Cohen nay
Lott aye
Froelich aye
Moorhead aye
Maraziti aye
Latta aye

Clerk: Fourteen members have voted aye, 24 have voted no.

Chairman: And the amendment is not agreed to.

* * * * *

Wiggins: Members of the committee as we all know ...

as we all know, Subparagraph 2 is directed primarily to the area of electronic surveillance for alleged national security purposes. Since the subject has not been debated before this Committee, my motion to strike is to focus our attention on that subject.

I should like to set the focus for this debate concerning electronic surveillance by recalling that these individual wiretaps commenced early in 1969 and continued for approximately a year thereafter.

* * * * *

The clear bulk of that evidence involves 17 wiretaps which were commenced in the spring of 1969. I want to set the focus of the debate by making one assertion which I believe cannot be contradicted, and that is that the law with respect to wiretaps which are genuinely and honestly in the national interest is that the President does have that authority in 1969 and he has that authority today. It is improper to infer that it is illegal to install a wiretap which relates to national security matters.

* * * * *

Now, back in 1969, this nation was involved in a war in Southeast Asia. This nation was also involved in sensitive negotiations with the Soviet Union with respect to arms limitations. We have had evidentiary materials in abundance, in abundance, ladies and gentlemen, that there were leaks concerning the bargaining position of the United States vis-a-vis the Soviet Union which caused enormous concern by the President's top advisers and by the President himself; there being no question, no question at all, that Henry Kissinger was greatly concerned about these leaks, and as a result of those leaks a system of wiretaps on possible sources of that leak, those leaks, were instituted by the President.

* * * * *

Dennis: Mr. Chairman, just a word on the legal situation. None of us like wiretaps very well, but we are talking here about what was legal and what was proper as of the time that it was made and as of the time today.

Now, at the time of the wiretaps we are talking about I agree with Mr. Wiggins, the question is was national security involved. That is a factual question. But, if it was, there was nothing illegal about these wiretaps, and it is very doubtful that there is anything illegal today.

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Edwards: I rise in opposition to the motion to strike. These 17 wiretaps started on May 12th, 1969 as a result of the Beecher article in *The New York Times* that told the

public about the secret bombing of Cambodia. And I want to correct the record right now.

The SALT talks had nothing to do with it. There has never been an allegation that these 17 wiretaps were triggered by any SALT leaks, and there is nothing in our evidence to so indicate. Nor did it have anything to do with the Vietnam war, did these taps have anything to do with leaks about the Pentagon Papers. That did not come until nearly two years later.

Dennis: Now wait a minute.

Edwards: On your time, my friend, you can straighten it out.

Wiggins: We shall.

Edwards: But that is the fact.

I think it is really more important to point out what was done with the information that resulted from these taps.

Mr. Hoover, the Director of the FBI, would send them to the White House, to the President and there was a total from 1969 to 1971, and they went on for more than two years, there was a total of 104 summaries sent. And what happened? No, it was found that there had been no leaks of confidential information from these 104 summaries, nobody went to jail, nobody was charged, nobody lost their job, nobody was transferred.

There were six or seven members of the National Security Council who had their telephones tapped. Four newsmen later and several White House employees. Most of these people had no access to any confidential information whatsoever. And as I pointed out earlier, these summaries indicated that no leaks were going on.

Well, how was this information used by the White House? On December 29, 1969, Mr. Hoover wrote to the President and said that former Secretary of Defense, Clark Clifford, was about to write an article in *Life* magazine attacking Mr. Nixon on his handling of the Vietnam war, and part of Mr. Clifford's attack was to be regarding Mr. Nixon's criticism of President Thieu.

Well, immediately this triggered political action by the White House. Staffers immediately took instant action. Presidential assistant Butterfield wrote Magruder: "The name of the game, of course, is to springboard ourselves into position from which we can effectively counter whatever Clifford takes." The suggested method of countering Clifford's article was sent by Haldeman, the chief political advisor to President Nixon, and included a proposed discrediting of Clifford by use of his prior statements or a counter article.

* * * * *

The basic nature of the material developed from these 17 wiretaps and sent to the White House was political and personal. There were no leaks. The FBI was presumably sending what the White House wanted, and certainly the flow of the information was not stopped by the White House when the character of the material became obvious.

The material, in addition to the political information on Clark Clifford, contained reports on how certain Senators were expected to vote on legislation, on the activities of critics of the Administration's policies, on the campaign plans of Senator Muskie.

...And information on the social habits and political plans of White House employees. The material had no conceivable relevance to national security, but only could have had political value.

I personally reviewed many of these summaries that the FBI sent to the President describing what was said over the home telephones of these people under surveillance, and I want to be careful not to describe any of the information in such a way as it could get back or be traced to the people involved.

Suffice it to say the conversations were those of citizens, their wives, their children, chatting on the telephone with acquaintances and close friends, confiding their jobs, their sorrows, their anxieties about their personal lives, and in some instances, their observations about political and social events of the United States...

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Eilberg: Mr. Chairman, I oppose the motion to strike. We are told that national security is involved, but I would like to suggest that the mere assertion of national security is not enough.

Chairman: The time of the gentleman has expired. All time has expired. And the question now occurs on the amendment 2 offered by the gentleman from California. All those in favor of the amendment please signify by saying aye.

(Chorus of aye)

Chairman: All those opposed.

(Chorus of no)

Chairman: The noes appear to have it. Ordered.

The Vote on Section 2

DEMOCRATS

Donohue nay
 Brooks nay
 Kastenmeier nay
 Edwards nay
 Hungate nay
 Conyers nay
 Eilberg nay
 Waldie nay
 Flowers nay
 Mann nay
 Sarbanes nay
 Seiberling nay
 Danielson nay
 Drinan nay
 Rangel nay
 Jordan nay
 Thornton nay
 Holtzman nay
 Owens nay
 Mezvinsky nay
 Rodino nay

REPUBLICANS

Hutchinson aye
 McClory nay
 Smith aye
 Sandman aye
 Railsback nay
 Wiggins aye
 Dennis aye
 Fish nay
 Mayne aye
 Hogan nay
 Butler nay
 Cohen nay
 Lott aye
 Froelich nay
 Moorhead aye
 Maraziti aye
 Latta aye

Chairman: The Clerk will report.

Clerk: Ten members have voted aye, 28 members have voted no.

Chairman: The amendment is not agreed to.

Cohen: Mr. Chairman, I have an amendment at the desk.

Chairman: The Clerk will read the amendment.

Clerk: Amendment by Mr. Cohen:

On page 3, Subparagraph 4, strike line 7 and insert in lieu thereof the following new language, "National Committee and the cover-up thereof and concerning other unlawful activities including those relating to the confirmation of Richard Kleindienst as Attorney General of the United States, electronic surveillance of private citizens, the break into the offices of Dr. Lewis Fielding and the campaign financing practices of the Committee to Re-elect the President."

Cohen: Mr. Chairman, I might just briefly indicate this is the long-awaited amendment put together by Mr. Butler and myself, calling for greater specifics in the Subparagraph 4. I think we all agree, at least I do and Mr. Butler, that the statement was too general.

Chairman: The question is on the amendment offered by the gentleman from Maine.

All those in favor of the amendment please signify by saying aye.

(Aye)

Opposed.

(No)

The amendment is agreed to.

The gentleman from California is seeking recognition.

Wiggins: Yes, Mr. Chairman.

I have a motion to strike Subparagraph 3 at the desk.

Chairman: The Clerk will read the amendment.

Clerk: Amendment by Mr. Wiggins. In the Hungate Substitute, strike Subparagraph 3.

Mayne: This particular paragraph is the one which makes the charge of setting up the Special Investigations Unit in the White House, so-called Plumbers unit.

There is no question that there had been a series of very damaging and serious leaks for several years. One has already been referred to by Mr. Moorhead as the leak in 1969 of the secret estimates of the United States Intelligence Board of Soviet strategic strength, and particularly of Soviet first strike power. This was a highly confidential document, but it was released by some official, leaked to a reporter and appeared in *The New York Times* on June 18, 1969, stating our estimates of Soviet first strike power.

Then came —I will not recite all of the leaks that intervened. But probably the most famous one was the release and publication of the so-called Pentagon Papers which had to do with our decision-making process in Vietnam.

* * * * *

Now, this was a highly dangerous situation. The President, who was responsible for the national security, had a clear duty to act. He had to do something. He elected to set up this special investigations unit in the White House.

Now, I do not happen to agree with the way in which he acted. I think it would have been much wiser for him to rely upon the Federal Bureau of Investigation, which was the established agency with long experience and knowledge in national defense security investigations, but it is very easy for me and it is very easy for critics of the President, with the benefit of hindsight, to say that he should have gone the other way.

But who is to say when a man charged with that awesome responsibility has to make a decision to protect the security of the United States if he does not make precisely the correct decision? Act he must and act he did.

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Fish: The genesis, I suggest to you, of the Plumbers was the Pentagon Papers and in a meeting between the President, Mr. Ehrlichman, and Mr. Mitchell on July 6, we have the discussion of forming a "nonlegal group in connection with the Pentagon Papers affair."

So there is no question here of Presidential knowledge. The question has been raised, and will be raised again, however, that the issue was national security from the start, that this legitimized the formation of the Plumbers and the effort to publicly discredit Mr. Daniel Ellsberg.

* * * * *

Conyers: I rise, of course, in opposition to the motion for strike and I must observe that for the second time in a row we have clauses that have attempted to persuade the American people and our colleagues in this immediate vital judgment that national security itself was a justification for the illegal activities emanating directly from the White House and I am very sorry to say from the authority and the condonation of the President of the United States himself.

And I think that we cannot here today make this record too replete with the documentation that says once and for all that the bugaboo of the national security will no longer suffice to intimidate the Congress or scare the American people into condoning activities of the kind that we have heard here in Article II in these proceedings.

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According further to the notes of the President's former Domestic Advisor of his meeting with the President on July 6th of 1971, the President asked: "Put a nonlegal team on the conspiracy."

Now, we have learned during these months in the euphemisms of White House parlance that stonewalling, modified hangout has a significance all its own and a nonlegal team suggests precisely that, and Ehrlichman's notes reflect the assignment of David Young, co-chairman of the Plumbers, to a special project.

MONDAY, JULY 29, 1974

THIRD SESSION

Chairman: The Committee will come to order.

Mayne: Those of this panel who would impeach the President for setting up the Special Investigative Unit would have us believe that there was just no national security involved in it at all.

* * * * *

There was the disclosure by one of our senior officials,

at least so the newspaper reporter said, of our secret fall-back position, our final offer in the SALT talks, the Strategic Arms Limitation Negotiations, in Helsinki in 1971. Our negotiators there, our negotiating team, were trying to achieve as much security for the United States as possible from nuclear attack.

The package which we had on the table therein dealing with the Russians was asking them to stop the construction of all nuclear missiles, both land and submarine based.

But, according to another reporter, one of our senior officials confided in him that we were willing to settle for less, that we did not really expect to get that much security from the Russians, and that if they turned us down we would be willing to settle for just a ban on construction of land-based missiles, and let go ahead with the submarine based.

Well, now, when that was printed in the newspaper, and the Russians read it, you can imagine what that did to our chances of getting the more secure arrangement, the greater protection for our country. That was definitely a security leak which needed to be plugged.

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Wiggins:... in my remaining moments, Mr. Chairman, I want to try to place this Plumbers issue in its proper focus. The question is not whether the creation of the Plumbers was justified. There is no law nor regulation nor rule nor Act of Congress prohibiting the President of the United States from establishing a unit within the Executive Branch for the purpose of coordinating intelligence activities. That is not the issue. The issue rather is whether or not the activities of that... constituted an impeachable offense with respect to the President. We know that they do not, unless the President approved them, had knowledge of them, acquiesced in them, condoned them.

* * * * *

The President, without question ladies and gentlemen, regarded the Pentagon Papers matter as a national security issue. It is idle to talk about whether a conviction is proper under the Espionage Acts. Those Acts, as my colleagues at the desk know, involve a foreign power. It was not the motive of Dr. Ellsberg, ladies and Gentlemen, it was the fact of the disclosure. Whatever his motive, that prejudiced the United States of America. And the President's actions were prompted by reason of the fact of the disclosure rather than any subjective motive of Dr. Ellsberg to aid a foreign power, a fact which would be very important in a prosecution under the Espionage Acts.

That is the issue. That is the issue, whether or not after

the 17th of March, 1973, when the President learned of an act which happened about a year and one half prior to that, whether he acted prudently given his state of knowledge and belief at that time.

And I am telling you that the weight of the evidence, the overwhelming weight of the evidence is that Richard Nixon believed the Pentagon Papers issue was a national security issue, and his actions after learning in March of 1973 were wholly consistent with that belief on his part.

Sarbanes: I think it is very important for the members of this Committee and the American people to appreciate exactly what the Plumbers did in the Fielding break in. The Plumbers broke into Dr. Fielding's office. Dr. Fielding was not under suspicion. They went into his office in order to get one of his files on one of his patients

If the purpose was legitimate, why did they not obtain those files in a lawful manner? And the answer to that is, of course, the purpose was not legitimate.

Who were the Plumbers? They were a band of hired hands. They were not law enforcement officials. Why was not the FBI brought into this matter if it was a legitimate matter for government? Because the plumbers were doing absolutely illegal things that the FBI refused to do and that does go back to the Huston Plan of the previous year when this fellow, Huston, put forward to the President, and had it approved, a plan that involved surreptitious entry in a memo that says "the activities involved be illegal entry and trespass" and the FBI added a footnote to that report and said "The FBI is opposed to surreptitious entry."

That same Huston Report provided for covert mail coverage, and the FBI added a footnote and said "The FBI is opposed to implementing any covert mail coverage because it is wholly illegal." They could not use the FBI because the FBI was not prepared to do these illegal things.

Let us look at one other thing. From whence did the Plumbers get their money? Where did the money come from in order to do this operation? Ladies and gentlemen, it came from a private source, Mr. Baroody, a PR man here in Washington, a close friend of Mr. Colson's who states in an affidavit in the latter part of August or the early part of September, "Mr. Colson telephoned me and told me that the White House had an urgent need for \$5,000." So, he took \$5,000 over to Colson's office and they told him to go down to an office and give it to the fellow that he would find there. That was Egil Krogh, the head of the Plumbers unit. So, Baroody goes down there with his \$5,000 in cash and gives it

to Krogh. He takes it in there and he said "Did you look in there to see what it was?"

A: I looked in the envelope to see this was money inside of it. It was in the form of cash.

Q: Have you stated to Mr. Colson anything about the form in which you wanted the funds?

A: Yes. He wanted them in cash.

Q: Why?

A: I believe because it was felt that there shouldn't be any way to trace the money that was used."

Chairman: The time of the gentleman has expired. All time has expired.

And the question now occurs on the Wiggins amendment to strike Paragraph Three. All those in favor of the motion to strike please signify by saying aye.

(Chorus of ayes)

Chairman: All those opposed?

(Chorus of noes)

Chairman: The noes appear to have it. The noes have it and the amendment is not agreed to.

Brooks: Mr. Chairman, in this debate we have neglected a most vital part of this Article, that being Section 1. I think it is very pertinent to this entire activity. It is a primary area of abuse that has subjected the American people to spying and prying and in the interest of debate, in that all of those members who have an interest in presenting the facts on this matter, Section 1, and those who are opposed to it, I have an amendment at the desk to strike Section 1 and would so move.

Chairman: The Clerk will read the amendment.

Clerk: Amendment by Mr. Brooks. Strike Subparagraph One of the Hungate Substitute.

Brooks: Mr. Chairman, Mr. Nixon's personal involvement in efforts to misuse IRS for political purposes in violation of individual civil rights is clearly documented in events that occurred on September 15, 1972. In the tape of a meeting between the President, Mr. Haldeman and Mr. Dean, there is no question that there was some discussion as to how efforts were going to get the IRS to institute audits, investigations of Mr. Nixon's political enemies. Some of the evidence involving Mr. Nixon's efforts to misuse the IRS has not been made available to this Committee. The transcripts submitted to us do not include the last 17 minutes of this meeting with Haldeman and Dean on September 15. And yet Mr. Dean has testified that during that time there was a

specific discussion about the plan to use IRS for these purposes.

Judge Sirica has listened to the entire tape and has announced in open court that those 17 minutes do indeed involve conversations relating to the abuse of the IRS. He has since made those 17 minutes available to Mr. Jaworski but under the restraints put on him by the U.S. Court of Appeals has been unable to provide them to the Judiciary Committee. And needless to say, Mr. Nixon has not made this portion of the tape available to us despite his continuing protestation that he intends to cooperate fully with our investigation.

Dennis: Now, the truth of the matter is that there really isn't any evidence connected with the President again, if you please, which we are always sort of sloughing over here, that the President did anything out of the way about the IRS at all. The only thing they can even attempt to cite is the conversation of September 15, and as a matter of fact, the President doesn't refer to the IRS in that conversation. He says, "We have not used the power in this first four years as you know. We have never used it. We haven't used the bureau...", that is the FBI ... "and we haven't used the Justice Department." He doesn't talk about the IRS, as a matter of fact, but the interesting thing is that all that conversation is talk anyway.

Now, it is not good talk. It would be damaging talk if there was something to be shown that the President ever followed up on it. But I haven't seen anything in this record where the President did follow up on it.

Danielson: Inasmuch as Mr.... my distinguished friend, Mr. Sandman, and others request specificity on many of these items I feel it is appropriate that it be provided. Within this field of the use of the Internal Revenue Service, there are other items than those mentioned by Mr. Brooks. For example, along in 1971, and 1972, Mr. John Dean, who had authority to work as liaison between the White House and the Internal Revenue Service, obtained confidential Internal Revenue information about a rather large number of people and under his direction efforts were made to have the Internal Revenue Service conduct audits on certain persons who were low on popularity within the White House. This is borne out on March 13, 1973, for example, in a conversation within the Oval Office.

The President asked Mr. Dean if he needed anything from the IRS and Dean responded that he didn't at that time. He said he now had sources in the IRS and could get whatever he needed without any further trouble.

Wiggins: I thank my colleague for yielding and I will only take a moment but I do want to put in focus what my friend from Illinois has just said about this gregarious act of John Dean in going to the IRS with some 500 names of political opponents of the President. That is absolutely indefensible, ladies and gentlemen, and no one at this table, Republican or Democrat, friend or foe of Richard Nixon, condones for one minute that act. But, you see, the President didn't know that. He didn't know that John Dean went to the IRS and there isn't a word of testimony that he did know when Mr. Dean went. And it is important as well to know what the IRS told Mr. Dean.

The person that told Mr. Dean was the appointee of the President, executing the President's instructions, I presume, and there is no dispute as to what Mr. Dean was told, and in so many words, and if you will pardon the expression, he was told to go to hell.

Now that is what happened.

With that the gentleman is not to be impeached....

Dennis: Mr. Chairman, continuing the situation I think it is worth remembering that Commissioner Walters said on the occasion that Dean came to him that Dean stated that he had not been asked by the President to have this done and he did not know whether the President asked that any of this activity be undertaken. And Mr. Dean stated here in this Committee in answer to Mr. Railsback, "I don't know of any audits that were accomplished," and the Joint Committee on Internal Revenue Taxation found that in fact none of these people were audited. So that is the record on the situation, as to what actually took place as against a political conversation on the 15th day of September. And there is no evidence in the record anywhere that the President ever made any request except a hearsay statement by Clark Mollenhoff, who says that Haldeman told him that the President asked for a report on Governor Wallace's brother, which wouldn't stand up in any court in the land, and there is no evidence that that in fact is the truth and it has been denied by two or three other people during the course of the testimony.

And as Mr. Railsback said, there are good people in this. There is Secretary Shultz, there is Secretary ... Commissioner Thrower, there is Commissioner Walters. All of them turned Ehrlichman's efforts and Dean's efforts down. There is no evidence of a presidential effort and the thing that there is evidence of is that Secretary Shultz and Commissioner Walters and Commissioner Thrower were presidential appointments of Richard M. Nixon.

Mezvinsky: Mr. Chairman, this article is the article on

abuse of power. To me it really symbolizes what the drafters of the Constitution really meant. They were worried when they just came out of a revolution whether or not we in fact would find a President that would abuse that power and they found that a gentleman from Virginia, Mr. Randolph, said that he really advocated the impeachment process specifically because he was worried about that abuse of power, abuse of a presidential power because if the President would abuse that power, it could very well lead to "insurrections" by the people.

I think why the gentleman from Illinois, Mr. Railsback, and also the gentleman from Iowa, Mr. Mayne, are so concerned about this matter and why some of my colleagues in all due respect are defensive is because I think there is the realization that one of the greatest abuses that we have is the abuse of the IRS because... there is the realization that it poisons the system if you abuse the IRS. Really, what you are doing, you are poisoning the system and to a great extent it becomes probably one of the most hideous of all the charges. And why? Because we all pay taxes. We know that the IRS has personal information. We know that it is based on honesty and our conscientious ability to pay our taxes. And we have really ... what we have is a self-confession when we all file our taxes. We know that and we understand it.

And I think why the apprehension sets in is that there is the realization that Richard Nixon's presidency has really leveled a serious blow in the area of abuse of the IRS.

Now, let us point to the one item that is very interesting to me, and that is the whole focus on September 15th in the testimony of the gentleman from California, whom I respect, Mr. Wiggins. No direct testimony. We have Mr. Dean just talking about it. He is talking about it supposedly in the abstract.

Well, let me say this: It is not in the abstract, it is right on target.

Let us refer to March 13, 1973, and what do we see? We see a direct involvement, direct discussion at page 50 where they are talking about issues. What does the President say directly. "Do we need any IRS stuff." That is the answer to direct involvement.

Railsback: Let me just say, let's don't delude ourselves here. There was a conversation, the President was involved. The President knew exactly what John Dean had done on September 11th. Not only did he not turn it off, in my opinion, and according to John Dean's direct testimony, he told him to go back again.

Now, some people argue that because nothing was done that there is no serious offense. Why wasn't, why wasn't there anything done? Was it because the President of the United States decided to turn it off and register his outrage? Is it because these investigations did not occur because there happened to be two rather dedicated public servants, one by the name of George Shultz and then a rather good IRS Commissioner that would not have anything to do with it. And I think that Commissioner Walters gave very good advice to Mr. Dean when he presented this list. He testified he told Mr. Dean that compliance with such a request, and I quote: "Would be disastrous for the IRS and for the Administration and would make the Watergate affair look like a Sunday School picnic."

Flowers: You know, my friends, a fundamental principle of our government is that equal justice under law is a guarantee of every citizen. To put it another way, we are a government of laws and not of men.

This commitment to equal justice was written down in a few places, like in our Constitution, and in our laws, and in some court decisions. But, I think just as important are some commitments to this principle that must be assumed in our society.

For instance, the assumption that the sensitive agencies of government with peculiar power over each one of our citizens, like the police power, and the power to tax, will not be abused or misused for political purposes. This is a fundamental source of the people's confidence in our government.

That the President and his men should have trifled with this source seems to me to be sufficiently grave to qualify as a component of an article of impeachment.

Can you imagine, can you imagine under any circumstances ever the President of the United States saying to an aide, "Do you need any IRS stuff?" Well, what happened on March 13th, 1973 in the White House?

Can you imagine the President's lawyer, his counsel, his close subordinate, saying with impunity, and then apparently approval of the President, "We have a couple of sources over there that I can go to. I don't have to fool around with Johnnie Walters," who was IRS Commissioner, "we can get right in and get what we need."

That also happened in the White House.

... In the spring of 1970 George Wallace was not Governor of Alabama, but engaged in a heated contest with the then Governor Brewer who had succeeded Governor Lurleen Wallace on her death in 1968.

The decision was made, by whom I don't know, but I

think you can be certain it was in the highest councils of the White House, that the success of Governor Wallace in the Democratic Primary in the state of Alabama was somehow incompatible with the interests of the Nixon Administration. So, what did they do? Well, at the specific instance of Mr. Higby, primary assistant to Mr. Haldeman, Chief of Staff to the President, \$400,000 in funds left over from the 1968 Presidential campaign was funneled to Alabama in a devious and undercover manner in an unsuccessful effort to defeat Governor Wallace. There is direct evidence to this from Mr. Kalmbach before this Committee in this room.

Then in early 1970, H.R. Haldeman directed a special counsel to the President to obtain a report from the IRS about the investigation of George Wallace and his brother. Haldeman gave assurances that the report was for the President. A report from IRS Commissioner Thrower was requested on this basis, received and given to Haldeman. Material contained in the material was thereafter transmitted to Jack Anderson, a syndicated columnist, by Murray Chotiner, a White House employee and personal confidant of the President. Portions of the material potentially dangerous politically to Governor Wallace were published nationally on April 13, 1970, several weeks before the primary election.

* * * * *

Sandman: Well, I think now we have the whole case and if we could rest all of it on this one, this lawyer would have asked for a directed verdict because these are the facts and now you know why they will not be specific. All they have are generalities, groups of dates and each one includes about three months. All they have is in 1970 Haldeman told Mallenhof. All they have is over here some time in '71 and '72 Caulfield did something that Dean told him to do. All they have is in the Spring of '72 Ehrlichman told someone else something.

* * * * *

Impeach the President of the United States for a thought, not a deed? That is what he is saying.

When did that happen before? And what kind of law is this going to make for every man that sits in the White House from now on? This is what I am concerned about. This can be a stage show from now on for any majority party to manipulate against any man that becomes President of the United States that is not a member of his party, and such actions as that cannot be in the best interest of the government and the country we all love so well.

Fish: I would just like to say that I know most people listening to us know really what is the fact here, that to

faithfully execute the laws of our country does involve policing your lieutenants, and does involve an obligation to stop them when you see the course which they are following. And for those who are looking for the smoking pistol, I am just afraid they are not going to find it because the room is too full of smoke.

McClory: I just want to say don't you think that it is really genuinely fortunate that we had Commissioner Walters and that we had Secretary of the Treasury Shultz who decided that they just would not tolerate any such business as that, even though some close to the President wanted to misuse the IRS?

Dennis: I completely agree with my friend. As I said before, they were appointees of the President and I think that he is entitled a great credit for having that kind of people as his main appointees. He appointed them and none of them have said anything in the evidence before us in this record to indicate that they feel that the President ever pushed them.

Edwards: Mr. Chairman, I would like to speak just for a few minutes about all of Article Two, which I suggest is an expression of our deep devotion to the Constitution, and above all, to the First Amendment, known as the Bill of Rights.

Article Two is our rededication to and our reaffirmation of the Bill of Rights and the principle that no officer of our government from the most lowly to the highest can violate with impunity those fundamental constitutional rights guaranteed every American citizen.

* * * * *

Jefferson in a letter to Madison urged the adoption and said, "Let me add that a Bill of Rights is what the people are entitled to against any government on earth."

Why do I review this history this late at night in the consideration of Article Two? It is, of course Article Two charges President Nixon with intentional violations of the Constitution, chiefly Amendments one, four, five, and six.

No proposition could be more profoundly subversive of the Constitution than the notion that any public official, the President or a policeman, possesses a kind of inherent power to set the Constitution aside whenever he thinks the public interest, or to use the more popular term now given such easy currency, the national security warrants it.

That notion is the essential postulate of tyranny. It is indeed the very definition of dictatorship, for dictatorship is simply a system under which one man is empowered to do whatever he deems needful for the whole community.

* * * * *

Cohen: ...I find it amazing that the fine lawyers on this Committee have somehow overlooked the concept of an attempted wrong act. All we have heard about the IRS is, well, what happened? It wasn't accomplished. It failed. It reminds me something of the words we have seen in the transcripts, a dry hole.

I would like to direct a couple of questions to the staff now and ask you about the criminal penalties involved under this section.

I assume it is a crime for anyone, any officer, or employee of the United States, to breach the confidentiality of the income tax returns of the citizens of this country and I further assume that under Title 18 the President and his subordinates fall within the definition of an employee of the United States government.

Is that correct, Mr. Jenner?

Jenner: Congressman Cohen, Section 7212 of the Criminal Code provides expressly that attempts to interfere, attempts to obtain information with respect to income and IRS materials shall be fined not more than \$5,000 or imprisoned not more than three years, and then is supplemented by Section 7213 which makes it unlawful for any officer or employee of the United States to divulge any of the contents of an income tax return and be fined \$1,000 or imprisoned not more than one year and if the offense be by an officer or employee of the United States, he shall be dismissed from office or discharged from employment.

Cohen:... Am I correct, Mr. Jenner, that it is not necessary to have a specific act carried out as such, the actual accomplishment of the act?

Would it be sufficient, for example, if the President were to direct or ask or inquire of John Dean to obtain certain information, would not the act itself or the intent come from the direction to Mr. Dean as a matter of law?

Jenner: The direction would be an attempt.

Cohen: And it would not be necessary to have the particular direction completed in order to be a violation, would it?

Jenner: That is correct.

Cohen: Thank you.

Mayne: Now, I just want to emphasize in the time remaining to me that there is absolutely no question on the evidence in this case, aside from some of the argument, that there were serious national security problems in connection with these leaks which the President, carrying out his duty to uphold the defense and national security of the country, was determined to stop. These leaks affected the war in Vietnam where they affected our troops. They affected our attempts

to negotiate the end of the war in Vietnam. They affected the SALT talks. They affected Guam. They affected various negotiations and relationships with the Russians. And to emphasize that this was a legitimate concern of the President, I just want to read from a couple of quotations from Dr. Kissinger referring to these leaks... "Each of these disclosures was of the most extreme gravity. As presentations of the government's thinking on these key issues, they provided the Soviet Union with extensive insight as to our approach to the SALT negotiations and severely compromised our assessment of the Soviet Union's missile testing and our apparent inability to accurately assess their exact capabilities. The disclosure of the assessment of the Soviets' first strike capability would provide a useful signal to the Soviet Union as to the efficacy of our intelligence system. It would also prematurely reveal the intelligence bases on which we were developing our position for the impending strategic arms talks."

* * * * *

Now, the President of the United States had a duty to act and he did act. He may not have done the most effective thing. Clearly this Plumbers unit went astray. They became law breakers. They were caught in a miserable crime out there in California. But there is absolutely no evidence that the President knew anything about the planning of that in advance.

I respectfully submit that the President did try, according to his best judgment, to protect the national security of this country and the mere fact that he didn't do it perfectly and got an inexperienced group in there who certainly botched the job and were a great discredit to our country in every respect, that does not mean that he was guilty of a high crime or misdemeanor for which he should be impeached....

* * * * *

Hogan: I would like to return to a thought which my esteemed ranking minority member offered to us this morning. He reminded us that a few years ago the country was being torn apart by groups of people that were going around bombing college campuses, burglarizing draft boards and ROTC facilities, and destroying the work of scholars and engaging in all sorts of lawless activity because they disagreed with the Vietnam war, they disagreed with the draft, they disagreed with the position of the Nixon Administration, and they felt that because their cause was just they could commit these crimes. They felt that they were above the law. Most of them had long hair and beards and dressed as nonconformists and desecrated the flag.

Inside the White House at the same time there was another group of men who wore well-tailored business suits, closecropped hair, no beards, and wore flag pins in their lapels. They disagreed with all of these other people, they thought that the cause was just, they believed that the Vietnam war was justified, they supported this administration, but they felt that because their cause was just they too were above the law. And for several months we have had a chronicle of all of the illegalities and crimes that they have committed under that assumption.

Now, obviously both of those groups of people were wrong. Both should be held accountable for the violations of the law.

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Now, as the consistent abuse of power holds greater danger for the republic than does a single criminal act, it is a much more serious offense and a far more serious charge than the one that this Committee has already approved. Now, has the President faithfully executed the laws?

Title 18, Section 4 of the United States Code says, quote:

"Whoever, having knowledge of the actual commission of a felony recognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or some other person in civil or military authority in the United States shall be fined not more than \$500 or imprisoned not more than three years or both." That is under misprision of felony. I submit that our record is replete with a whole litany of repeated offenses of this particular statute.

Sarbanes: I submit we came perilously close to losing our basic freedoms. And it is for that reason that we must act affirmatively here tonight. This is a long step forward in restoring the health of our Constitutional system. We do it, Mr. Chairman, pursuant to that Constitution. We do it with a strong sense of responsibility and a powerful belief in America and in the decency and the honesty of her people.

Latta: Mr. Chairman, if we had not had all these weeks of in-depth study on the evidentiary material, I frankly would have a hard time making a judgment on this article after hearing all of these remarks that have been made by our colleagues. I think this probably is attributable to the fact that I believe in the history of the Congress that there has not been a Committee that has studied so intently for such a long period of time and given such attention...

And let me direct my attention in the few moments that

we have to another area that concerns me, because we have touched upon it so lightly. In fact, I heard somebody say, and I am sure he said it in jest, something about it is a bugaboo, and I have reference to national security. National security. What are we talking about? We are talking about protecting the lives and the security of 220 million Americans. That is what we are talking about. So, let us not talk about it lightly. s

I happen to be one who since I have been in the Congress of the United States who has supported a strong national defense, a strong national defense. We cannot be second. We have got to be strong, and we are talking about national defense as a bugaboo issue? I think not.

The President of the United States was concerned about leaks right after he took office. Now, let us take a look at what he was talking about? Where were these leaks coming from? Were they coming from somebody's bridge club or out of some non-sensitive agency of the government? We know better than that. They were coming from no other place than the National Security Council.

Now, who sits on the National Security Council? Staff members? The President of the United States, the Secretary of Defense, the Secretary of State, and the Director of the Central Intelligence Agency, along with the Secretary of the Treasury and the Attorney General by designation of the President. Now, they do not talk about rules for a handball game. They discuss and make the policy for the defense of this country, your defense, my defense, our children's defense. That is what they do. And these leaks that concerned the President of the United States were coming directly out of that National Security Council.

Seiberling: I think that the gentleman, the other gentleman from Ohio, put his finger on one of the very fundamental issues which brought about this proceeding, which is whether when the, under the guise, the phraseology national security, the President has a blank check to violate the law, because that is what it is all about.

When Attorney General Ruckleshaus declined to fire Special Prosecutor Cox after Elliot Richardson had resigned because he declined to fire him, you remember what General Haig, the President's Aide, told him. He said "Your Commander in Chief has given you an order."

And Mr. Ruckleshaus had to remind him that he was subject to the law, and that the Commander in Chief could not give an order that violated the law.

Maraziti: We see here the sharp differences in the inter-

pretation of the facts and the law in this matter. Mr. Chairman, I submit that we have these sharp differences because the case and the evidence is not clear and convincing against the President.

Several allegations are now set forth, and the proponents of the resolution to impeach continue to refuse to set up the specific allegations in the articles.

We have theories propounded that the President should be held accountable for the acts of his subordinates even though he has no knowledge, and did not authorize certain acts. A great deal has been said and in fact, proven, that this staff did this and that staff member did that and these staff members in concert did this and did that.

But, Mr. Chairman, I submit to you that the proof fails and fails in a very vital respect when it fails to draw the line to the President of the United States.

* * * * *

McClory: I thank the gentleman for yielding and in one minute I would like to explain that while I voted against Article 1, which was the vote that we took on the last article, that I intend to vote in favor of Article 2. In my opinion there was no proof, no clear and convincing proof of any criminality or any conduct of the President which involved him as a co-conspirator, but the President does have a constitutional oath and an obligation to see to the faithful execution of laws and with multiple acts of misconduct, much illegality, with criminality being conducted in and around the White House by many of his top aides, it seems to me that the President has failed us in this take-care provision of the Constitution.

* * * * *

Mrs. Holtzman: Let us look first at this Houston Plan which the President, our President, your President and my President, approved. This Houston Plan which I read in anger twice or three times says that dissent is tantamount to treason and because it is tantamount to treason, the President has the right to bring to bear against any dissenter the force of the CIA, the force of the FBI, illegally, that a person is subject to having his mail opened or his house broken into or his phone tapped because he dissents. And it is not at all clear from the evidence before this Committee that the Houston Plan was not carried out.

And let us look at the leaks that everybody has talked about. Did they justify the ends we have seen? Does anybody argue that the wiretap of Joseph Kraft by a private operative on behalf of the White House is constitutional or legal and that the President can put his imprimatur on that?

Does anybody argue that that is within the bounds of the Constitution?

I can't believe it.

And what about the Ellsberg case? Perhaps the President didn't authorize the burglary in the first place but he according to Ehrlichman ratified it afterwards and if it were such a horrendous crime in the President's eyes, then why didn't he expose the people who were responsible to the criminal authorities?

No, he covered it up. And he said that Ehrlichman, who has since been convicted for that break-in, or being involved in that, he said that Ehrlichman was one of the two finest public servants he had ever known.

* * * * *

Owens: These instances of presidential abuse center around violation of the guarantee of civil liberties contained in the Bill of Rights, namely, the right to be free from government interference in his privacy, his home, his letters and his belongings, and his conversations.

I would hope that the President is watching this proceeding tonight. I feel that I have grown to know him intimately over the past eight months. We who are about to vote on this new article of impeachment do not wish him the slightest personal harm. We recognize that there is tragedy involved. There is only good will on this Committee and I believe that every member acts tonight in accordance with his or her conscience and in pursuit of a constitutional obligation, and I would hope that he would believe that.

... Probably the principal reason the Framers included the impeachment power in the Constitution was because they saw that the only remedy against a President for the unlawful enlargement of the executive power and the encroachment upon individual liberties was through this type of stern accountability, the only remedy. By passing these Articles of Impeachment we set an example. It is a fair example because we apply only the most fundamental and basic standards of which any President should be aware. And it is an example to future Presidents and to all who hold civil authority in this country that the Congress even to the exercise of its impeachment capability will stand against the abuse of power and the invasion of civil liberties which would undermine our Constitution or the rights and dignity of the individual.

We should not forget that the history of liberty in the world is very short, the history of tyranny is very long and the principal source of oppression has always been the unrestrained power of the State.

Hungate: I move the previous question.

* * * * *

Chairman Rodino at this point ordered a call of the roll to vote on the Hungate amendment to Article II. He then asked for a roll call vote on Article II as amended by Rep. Hungate. The two votes were identical.

The Final Vote On Article II

DEMOCRATS

Donohue aye
Brooks aye
Kastenmeier aye
Edwards aye
Hungate aye
Conyers aye
Eilberg aye
Waldie aye
Flowers aye
Mann aye
Sarbanes aye
Seiberling aye
Danielson aye
Drinan aye
Rangel aye
Jordan aye
Thornton aye
Holtzman aye
Owens aye
Mezvinsky aye
Rodino aye

REPUBLICANS

Hutchinson nay
McClory aye
Smith nay
Sandman nay
Railsback nay
Wiggins nay
Dennis nay
Fish aye
Mayne nay
Hogan aye
Butler aye
Cohen aye
Lott nay
Froelich aye
Moorhead nay
Maraziti nay
Latta nay

The Clerk: Twenty-eight members have voted "Aye."
Ten members have voted "No."

The Chairman: And the resolution is agreed to and pursuant to the procedural resolution, Article 2 as amended is adopted and will be reported to the House.

THE THIRD ARTICLE OF IMPEACHMENT



ARTICLE III

In his conduct of the office of President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office of the President of the United States, and to the best of his ability preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, had failed without lawful cause or excuse, to produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives, on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and willfully disobeyed such subpoenas. The subpoenaed papers and things were deemed necessary by the Committee in order to resolve by direct evidence fundamental, factual questions relating to Presidential direction, knowledge or approval of actions demonstrated by other evidence to be substantial grounds for impeachment of the President. In refusing to produce these papers and things, Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

In all this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States. Wherefore, Richard M. Nixon, by such conduct, warrants impeachment and trial and removal from office.

TUESDAY, JULY 30, 1974

FIRST SESSION

McClory: In presenting this article, Article III, it seems to me we're getting at something very basic and very fundamental as far as our entire impeachment proceeding and inquiry is concerned.

* * * * *

So, it seems to me implicit in this authority we have broad authority to conduct an investigative inquiry. This has been recognized in our proceeding, as a matter of fact, in that the House of Representatives delegated to us the authority to issue subpoenas, relevant and necessary to our inquiry.

As a result of that, we have issued four, I believe, subpoenas to the President, requesting information. Now prior to the time that we issued these subpoenas, we directed letters to the President, requesting information. And these letters requesting information were sent by the Chairman after consultation with the ranking minority member. In other words, we have the joint authority and the joint expression of Republicans and Democrats with respect to the information that we've requested.

Now the President, of course, did not respond to the request that we directed to him in the course of our letters. And so what we did, we exercised the authority which was granted to us by the House resolution to issue subpoenas. Now with respect to three of the subpoenas, the vote was 37 to 3, I believe, 37 to 1. No, the vote was 33 to 3 on one, 37 to 1 on two and 34 to 4 on the fourth one. In other words, the action of the Committee was bipartisan and it was overwhelming that we wanted this material, that we wanted this response to the request for information which we felt was necessary and relevant to our inquiry.

I recall when the President came before the joint session of the Congress, in January, he said words to the effect that he wanted to provide full cooperation with the Judiciary Committee, consistent only with the operation of his office. Now I suppose the qualification was more significant than it seemed to be at the time, because the words that came across to us were "full cooperation with the Judiciary Committee."

Now where is that full cooperation with the House Judiciary Committee? Well, we've had some tapes, and we've had some transcripts. The transcripts we got, of course, were

transcripts that were issued to the public, not issued in response to this Committee and to the Committee, but publicized, the edited transcripts, as they are called. They're the White House transcripts.

And the tapes. Where did they come from? Well, they didn't come from the White House. They came from the Grand Jury and they came from the Special Prosecutor's office. As a matter of fact, of the 147 tapes that we requested, we didn't receive a single one from the White House...

* * * * *

Since we began this inquiry, of course, the President has been involved in litigation. And the case went to the Supreme Court. And he made the same kind of plea to the Special Prosecutor in the court that he's made to us; that he should have the sole right, that there was an absolute executive privilege which prevailed, and he had the absolute right to determine what he would turn over and what he would not turn over.

Now that doctrine was knocked down. It was knocked down effectively insofar as the Court was concerned. Now it's true we weren't involved in that proceeding. Some people thought we should have been, and perhaps we should have been. But anyway, the doctrine was knocked down. And the doctrine of executive privilege, or absolute executive privilege has fallen.

As a matter of fact, I have felt, and a number of my colleagues here on the Committee have felt that the doctrine of executive privilege has no application whatsoever in an impeachment inquiry.

... if we are going to set a standard and a guide for future congresses, for future impeachment inquiries, there is no more important standard and guide than the one that we will determine with respect to this Article III. . . .

* * * * *

It is a case where the Congress itself is pitted against the Executive. We have this challenge on the part of the Executive, with respect to our authority. And if we think of the full process of impeachment, let us recognize that this is a power which is preeminent, which makes the Congress of the United States dominant with respect to the three separate and co-equal branches of government.

It bridges the separation of powers and reposes in us the responsibility to fulfill this mission. And the only way we can do it is through acting favorably on Article III. Thank you, Mr. Chairman.

Thornton: I have a perfecting amendment at the desk.

Rodino: The Clerk will read the amendment.

Clerk: Amendment by Mr. Thornton. The first paragraph, strike out the material commencing with: "the subpoena", and down through "Constitution of the United States." And insert in lieu thereof the following: The subpoenaed papers and things were deemed necessary by the Committee in order to resolve by direct evidence fundamental, factual questions relating to presidential direction, knowledge or approval of actions demonstrated by other evidence to be substantial grounds for impeachment of the President. In refusing to produce these papers and things, Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment voted by the Constitution in the House of Representatives.

Thornton: Members of the Committee, the matters which have been raised by the proposed article by the gentleman from Illinois deserve our very serious reflection and thought. I have previously expressed my own views that the failure to comply with subpoenas does constitute a grave offense, and I have also expressed that in my view that offense should have been included within one of the substantive articles which has been previously presented and adopted by this Committee.

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I think that it is important that in approaching this we should be aware that here we are dealing with directly and intimately a matter which can have a bearing upon the constitutional basis of power between the three departments of government, and that what we may do with regard to the adoption of this article is going to in one way or another possibly affect the future of those balances.

If we do nothing, we may indeed limit the authority of the legislative branch to make a proper inquiry as to the misconduct under the impeachment provision of individuals in either the executive or judicial branches of government. If on the other hand we draw too broadly upon our power and authority, we might distort the balance of power to give the Legislative branch under its impeachment clause the authority to constitutionally investigate and determine the actions of members of the Executive or Judicial branches of government.

For this reason it seems to me that if this article is to be given consideration, it must be sharply limited and defined to

the presence established by the other evidence which might rise to the level of impeachable offenses. And that is the purpose and effect of the perfecting amendment which I have offered and which I ask the members to adopt....

Froehlich: Mr. Chairman, members of the committee, and the gentleman from Arkansas, no matter how sharply limited and defined you try to draw this article, this is clearly an indication of alleged absolute power of the President versus the alleged absolute power of the Congress, a classic case in separation of powers.

The President claims Constitutional and historic tradition of executive Privilege and the Congress claims exclusive power of impeachment. What reasonable men would not properly place this impasse before the third branch, the courts, for final arbitration and decision in both in the interests of obtaining information or substantiating the President's compliance or non-compliance under the Constitution.

Clearly, the President has asserted his Constitutional responsibility vested in him in Article II to protect the office of the Presidency against the infringements of other branches. This argument was also advanced by the President in responding to subpoenas sought by the Special Prosecutor. In fact, the President used the courts all the way up to and including the Supreme Court to advance his position. What the Supreme Court said in the *United States vs. Nixon* in response to the President's argument is vitally important for this Committee to understand.

It said that in the performance of assigned Constitutional duties, each branch of the government must initially interpret the Constitution and the interpretation of its powers by any branch is due respect from the other.

It further stated that in the last analysis it is emphatically the province and duty of the Judicial Department to say what the law is. Thus, the Court said in essence that the President was absolutely correct in defending his interpretation of the Constitution but that the Supreme Court's decision with respect to claim of executive privilege was dispositive in the last analysis.

It then held that although the courts will afford the utmost deference in the Presidential need for confidentiality when the claim of privilege is based merely on generalized interest in confidentiality the assertion of the privilege must yield to a demonstrated specific need for evidence in a pending criminal trial, that is, the tapes must be given to the District Court for *in camera* inspection.

The decision of the Supreme Court did not say that-

executive privilege was not a viable doctrine. On the contrary, it said that certain powers and privileges flow from the nature of enumerated powers, the protection of confidentiality of Presidential communication has similar constitutional underpinnings. It also said the privilege is fundamental to the operation of government and rooted in the separation of powers under the Constitution. Thus, the Supreme Court has stated emphatically that executive privilege is a Constitutional privilege available to the President.

* * * * *

Therefore, at best we have two great branches of government involved in a stalemate, both arguing the Constitution. As the Supreme Court said, it is emphatically the province and duty of the Supreme Court to say what the law is. So if the members of this Committee believe their position, they should have gone to court and asked the court to say what the law is.

The Committee has every right to assert its understanding of the Constitution but it is not the final arbitrator. It is not the judge and jury. Our Constitution gives the courts the responsibility to interpret the law and I would remind the Committee that the President has responded to have Judicial subpoena served upon him and has recently stated he intends to fully comply with the Supreme Court rulings.

So there is a remedy available to test these theories of Constitutional authority to get information and that is to use the courts, not to attempt to impeach a President for defending what he believes to be his duty under the Constitution.

Seiberling: I support the Thornton substitute. I also support the McClory original article, though I think the substitute is an improvement. And the reason it is an improvement is because it makes it even more clear that we are not stating a broad power to obtain Presidential documents in any type of Congressional proceeding but we are limiting it to an impeachment proceeding which is what we have before us.

Now, it seems to me that the impeachment power—that no one can dispute that without the power to investigate, the impeachment power is meaningless...

Impeachment is the express exception in the Constitution to the so-called separation of powers doctrine. The very purpose of the impeachment power is to discover and remove those civil officers who have committed certain serious offenses against the state. Stonewalling tactics have no legitimate place in procedures which are designed to find the truth as rapidly and as completely as possible.

Now, if this were a court case the question of privilege

would be one for the judge of the court to decide.

But here in the first instance at least the Committee is the judge, acting for the full House, and the House thereafter, and if the House votes Articles of Impeachment, then the Senate is the ultimate court of appeal in this matter. And it is the Senate that can decide what the issues of law and fact are.

Now, the Supreme Court last week held that in a criminal case, the President's power to withhold documents, his power of executive privilege, must yield to the legitimate requirements of proof in a court case. If that is true in a criminal case involving third parties, how much more so is it true in an impeachment investigation, investigating the very conduct of the President himself...

We do not need to submit this to court. We have the power as acknowledged by Presidents in the past and we should exercise that power, and the only effective way we can exercise it, when a President refuses to respond to our subpoenas, is to include that as one of the impeachable offenses and give the Senate as the court of ultimate resort the right to pass on that offense.

Wiggins: Mr. Chairman, I rise in opposition to the amendment. The maker of the main position, you see, has dug himself a hole and the purpose of the amendment is to help extricate himself from that illogical position. The situation is this.

This Committee yesterday and the day before viewed the evidence and found it, I am told, overwhelming. I believe our good counsel called it a surfeit of evidence. I take that to be a good bit, Mr. Doar. And voted to impeach and remove the President based thereon, found it to be clear and convincing.

And now we seek to impeach him because he did not give us enough evidence to do the job.

Now, I would think that you have an option here, if you wish. You can frankly acknowledge the inadequacy of the evidence to impeach the President and perhaps impeach him for failing to provide that evidence, or on the other hand, you can vote that the evidence is sufficient to impeach the President as you have done and to recognize that the matters subpoenaed were not in fact necessary to the proper conduct of this Committee's inquiry.

* * * * *

... Those who voted for the first two articles cannot have their cake and eat it, too, and maintain logical consistency by voting for the third, in my opinion. In my

opinion, this article is inconsistent with the prior two.

McClory: I want to point out I voted against Article I which would involve criminal charge, conspiracy charge, obstruction of justice, against the President on the fact that there was insufficient evidence and the amendment which is offered by the gentleman from Arkansas which I propose to accept would make reference to the facts of evidence ... I did not say that there was sufficient evidence to impeach the President on Article I. I said there was insufficient evidence.

Wiggins: Unless my memory failed me the gentleman found by clear and convincing evidence just on yesterday that the President should be impeached and removed from office.

Danielson: Thank you, Mr. Chairman. I support the article offered by the gentleman from Illinois, Mr. McClory, and also the amendment offered by the gentleman from Arkansas, Mr. Thornton. I feel, Mr. Chairman, that it is essential that we resolve this issue of the subpoenas. The issue has been joined. This Committee has issued a number of subpoenas. The President has directly stated that he refuses to obey them and reserves the right to decide what evidence will be presented before us from his office.

... I submit that in resolving this question this Committee and the Congress must remember that we have no more right to refuse a jurisdiction which is ours than we have to assume a jurisdiction which is not ours. Nor does the Judicial department nor does the Executive department. It is for us to make a judgment here and on the floor of the House as to whether we are going to exercise our responsibility and our jurisdiction under the sole power of impeachment.

Finely drawn in the Thornton amendment to the McClory resolution, I submit that we will have met that issue, and I urge that both the amendment and the article be adopted.

Ms. Holtzman: There has been some talk that the failure of the President to comply with the subpoenas wrought no harm, and I would just like to point to the area of the milk inquiry in which we did seek a number of subpoenas and in which the Committee in general has come to the conclusion that the evidence has not been sufficient, even though there have been any number of indictments handed down, and some of the conversations that we subpoenaed had to do with these indicted persons.

Secondly, the argument is the same as was raised yesterday with respect to IRS. That is, an illegal act which does not succeed is somehow less illegal. That reminds me of the fact of attempted murder. Do we allow somebody to go free

because the victim survives? That is really a doctrine I think we cannot countenance.

And I would like to add one other point, and that has to do with seeking the rule of the courts. You know, the Founding Fathers placed the impeachment power solely in the hands of the Congress, and they explicitly rejected having the Supreme Court sit as the trier on a conviction, and if we were to allow the Supreme Court to decide on the relevance of the evidence on an impeachment inquiry... I feel we would be violating the decisions of the Founding Fathers to place the right to inquire for the purposes of impeachment solely in the hands of the Congress. And I very strongly support this resolution and yield back.

Seiberling: I am a little bit surprised by the argument of the gentleman from California, Mr. Wiggins. Mr. Wiggins is a very, very able lawyer, and he knows in a court trial ... the parties are entitled to all of the relevant evidence, not enough or barely sufficient to support a particular point of view, but all of the evidence because the more evidence you can get the stronger your case is and the better chance you have of prevailing. That is an argument which I think is so easily disposed of by any lawyer practicing in the courts that I am surprised that he would even make it.

Owens: I know that this amendment obviously is going to pass, but I oppose it. I suppose I feel stronger about this particular article than I do even about the other two that we have passed. I would vote to impeach on this basis on this article even if there were no other evidence.

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The Committee I think must say to the President, to future Presidents, that impeachment will be automatic if the President asserts his unique power to stonewall Congress in a legitimate impeachment inquiry in the future. The President is the only individual in this country who can refuse to honor a subpoena, and that is quite simply because he is the Commander in Chief of the Armed Forces and he is the head of the Executive Branch, and we have not the physical ability to overcome his resistance to a Congressional subpoena.

I think the power to compel evidence in an impeachment inquiry must be considered absolute...

* * * * *

Chairman: The time has expired on the amendment. All time has expired on the amendment, and the question now occurs on the amendment offered by the gentleman from Arkansas, Mr. Thornton.

Flowers: Roll call vote, Mr. Chairman. Roll call vote,

Chairman: All those in favor of the amendment when the roll is called please signify by saying aye, and all those opposed signify by saying no.

The Vote On An Amendment To Article III

DEMOCRATS

Donohue aye
Brooks aye
Kastenmeier aye
Edwards aye
Hungate aye
Conyers nay
Eilberg aye
Waldie aye
Flowers nay
Mann aye
Sarbanes aye
Seiberling aye
Danielson aye
Drinan aye
Rangel aye
Jordan aye
Thornton aye
Holtzman aye
Owens nay
Mezvinsky aye
Rodino aye

REPUBLICANS

Hutchinson aye
McClory aye
Smith nay
Sandman nay
Railsback nay
Wiggins nay
Dennis nay
Fish aye
Mayne nay
Hogan nay
Butler aye
Cohen aye
Lott aye
Froelich nay
Moorhead nay
Maraziti nay
Latta nay

Chairman: The Clerk will report.

The Clerk: 24 members have voted aye, 14 members have voted no.

Chairman: And the amendment is agreed to.

There being no further amendments before the desk, the Chair wishes to announce that there is one hour and 20 minutes remaining for purposes of debate on the article itself....

Hogan: Mr. Chairman, I think this is perhaps the most important thing that we have been debating since these current deliberations began. What is at issue here is executive privilege... (The President) claimed it in the instance of the criminal prosecutions and the Supreme Court has by a unanimous eight to nothing decision rejected his claim.

If the Supreme Court rejected it in that instance, certainly the Supreme Court would reject his claim vis-a-vis the impeachment inquiry by this Committee,

I would not have supported this article prior to the Supreme Court decision but now that we have it, there is no valid claim on the part of the President to ignore our subpoenas.

Now, heretofore I have had many discussions with my colleagues, Mr. Conyers of Michigan notably, who felt so very strongly about this, and at that time the question of executive privilege was a debatable one. It no longer is... that. So I agree with the Gentleman from Ohio, Mr. Seiberling, if we do not pass this article today, the whole impeachment power becomes meaningless.

Now, my friend from Wisconsin, Mr. Froehlich, says that we should have gone to court to enforce our subpoenas. Perhaps he is correct. Perhaps we should have. But in our system of justice, the individual who is mandated by the subpoena has the right and the opportunity and the obligation, if he challenges that subpoena, to move to quash the subpoena.

The President did not do that. He merely ignored it and having ignored it; the compulsion of our lawfully offered subpoenas still lies and he has ignored them.

* * * * *

Fish: I thank the gentleman. My next question would be directed at the author, Mr. McClory.

Mr. McClory, is it your view that if in the course of a trial in the Senate the —or before that, the President should have voluntarily come forward with the material that we have heretofore subpoenaed, that it would be possible for the managers on the part of the House to drop this article?

McClory: If the gentleman will yield, I will respond by saying emphatically yes, that the President has been given all kinds of opportunities to come forward and even at that late stage if he came forward with the evidence there is no reason why we could not drop Article III entirely.

Fish: I thank the gentleman.

Smith: Mr. Chairman, this Committee subpoenaed tapes, memoranda and other records of the President. I voted to issue most of those subpoenas. The President has furnished some of the material and he has furnished transcripts of many of the tapes and he has declined to furnish the balance...

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Mr. McClory said Congress is pitted against the Executive. It seems only natural and proper to me that the third coequal branch of our government ought to be the umpire or arbiter of this confrontation of claimed constitutional rights

and duties, particularly when that branch happens to be the one whose moral function it is to declare the meaning and effect of the Constitution.

And so it is that I am one of the six members of this Committee who voted to submit the enforcement of our subpoenas to the courts...

However, the majority of our Committee felt otherwise. I think this was a mistake, particularly in view of the recent Supreme Court decision which upheld the subpoena of some of the same material from the President by the Special Prosecutor. Most of us on the Committee feel that our case is even stronger than that of Mr. Jaworski but I think it is still a case and I am surprised at 38 lawyers who vote not to submit their case to court even if they are Congressmen and asserting the power and superior and supreme power of the Congress.

I still think we should have gone to court to enforce our subpoenas.

Kastenmeier: I support this article of impeachment to preserve the power of impeachment which the framers placed in the Constitution. Without the power to subpoena papers, materials, things necessary, the Congress cannot meet its constitutional responsibilities. I submit that for a chief magistrate to prevent the Congress from meeting its Congressional duty, its constitutional duty, is no different than when the President himself violates the Constitution. The offense is just as grave.

It is a high crime in the classic sense which the framers intended when they used that phrase in the Constitution.

... this Committee made a determination at the time we voted the subpoenas and we voted the subpoenas in May, in April, by votes of 37 to 1, 29 to 9, 34 to 4.

This Committee said at that time we needed this material. The President at that time said he would refuse to turn the material over to us. We measure this particular article in the time in which it is seen, not in terms of whether subsequent to that fact we have or have not acquired sufficient evidence to make the determinations we are set upon today.

Furthermore, it has been suggested that in many areas we may not have sufficient evidence even to this date. Articles of Impeachment which could lie in areas such as ITT, dairy, and other areas, may not well be endorsed by this Committee for the reason in fact that we do not have the materials which we found necessary to our inquiry but which the President has rejected.

* * * * *

Smith: We were talking about whether in the background

there were implications of the Fifth Amendment, that an accused shall not be required to be a witness against himself and I think the question which should be asked here is whether it is fair according to our tradition to say to the President in effect we don't yet have the clear and convincing proof we need to impeach. So we are requiring you to hand over what we hope will be your confession, we shall preemptorily impeach you for failure to turn them over on the order of the Congress even though the Supreme Court might have found that you have good Constitutional reasons for not handing them over.

Railsback: Mr. Chairman and members of the Committee, let me say at the outset that I don't attribute any evil motives to my friend from Illinois for offering this resolution, but let's ... that is what I said, I don't attribute.

Let me say, though, that I think this is a case where we, this Committee, which has somehow developed a rather fragile bipartisan support of two rather substantial serious Articles of Impeachment, is now about to engage in what I call political overkill.

There are many Republicans, I can tell you, on the House floor that have been impressed with the evidence that has been adduced in respect to the obstruction of justice charge, very serious, and also the abuse of power charge.

Now, what is this Committee about to do? We are about to be asked to impeach a President for refusing to comply with some subpoenas when he has produced substantial quantities of evidence.

What other alternatives did we have available to us? Well, number one... we did not try to cite him for contempt, and number two, we have been asked to draw negative inferences by reason of his failure to produce.

Now, let me just say I have no doubt in my mind but what in this case the court would have ruled in favor. The court would have ruled in our favor, and I will tell you, it is probably the only way we ever would have been able to get the evidence so that we could determine the truth or the falsity of the allegations against the President.

I think, Mr. Chairman, that with these remaining articles, and I understand we are going to have one on Cambodia, we are going to have one or we may have one on Cambodia and we may have one on fees and emoluments, this would be a political overkill, and you watch what happens to your fragile coalition that thinks there have been two serious offenses committed under Articles I and II.

McClory: In suggesting that the courts might resolve this,

the President has had the right all along to move to quash the subpoenas if he wanted to inject the courts into this. The Committee has decided that they were not subject to the court's jurisdiction, and I do not think there is any basis for saying that we are.

Seiberling: Well, I believe the gentleman sat over there in the hearing before the Supreme Court when it was Mr. St. Clair and Mr. Jaworski arguing the case of U.S. versus Nixon, and I was there, and I heard Mr. St. Clair make a very strong argument that the court should not rule on behalf of the Special Prosecutor because to do so would inject the courts into the impeachment process, which is a constitutional process, the sole power of impeachment . . .

Railsback: That does not have anything whatsoever to do with us. We are in a separate status. We are the Congress. We are not the Special Prosecutor. We have even greater rights to get the materials.

Conyers: Mr. Chairman, I would first like to indicate that the reason that I supported the McClory article in its full and undiluted form was simply because there was no reason in the face of this first historic instance of willful noncompliance on the part of a President to refuse to comply that we should have to modify in any respect the enormity of the challenge that he himself has put before us.

Now, I think it is more important than to begin worrying about whether we are going to have articles that do not meet with the approval of everyone on this Committee, that we continue this process as thoughtfully as we are able. To not include this article, one that is of enormous importance to the Constitution itself, would speak very poorly of the recommendations coming from the Judiciary Committee, and certainly ultimately the decision that must yet be made on the floor.

Now, too many members here are beginning to think that we are casting the final decision on impeachment in the Judiciary Committee. Well, let me remind you that there are 400 other members that are going to decide this, and I resent any implications of people on the Committee suggesting what ought and what ought not to be introduced now that we have two Articles of Impeachment, because anyone that does not like whatever other articles, including this one that is presented to them, has their obligation to vote against them. But, I do not think that they intimidate or curtail the views of any member on this Committee as to what they are supposed to do.

Now, I introduced the first motion that would have

accelerated the impeachment procedure by taking to the Floor immediately an article for the refusal of the President to comply, because if there is anything we must pull out of this impeachment process, it is the impeachment process itself, which the President himself now challenges by raising the spurious concept that he has raised here. Executive Privilege has no basis in an impeachment proceeding, and most scholars have said so repeatedly.

And so with those words, Mr. Chairman, I fully and strongly support this article and hope that it will be reported by the largest number possible on this Committee, and that it will be sustained by the majority of our colleagues on the Floor.

Dennis: Mr. Chairman, Articles I and II can be debated on the law and on the facts as, indeed, they have been and will be.

But, this proposed article we have before us now is utterly without merit. The President, in this instance, asserted what he claimed to be a constitutional right based on executive privilege and the separation of powers, and it is a right incidentally, which under certain circumstances has now been recognized by the court in the course of its recent opinion. We took a different position, and now we are going to say, without any resolution of that question, that because you, Mr. President, invoked a constitutional position we are going to impeach you.

Now, that argument ought to carry its own answer. We elected never to test the question. We never went to the Floor of the House and asked the House to vote a contempt as we might have done, and should have done if we thought he was in contempt. We elected by vote of this Committee not to test the matter in the court, as we might have done, and even though as the court reiterated the other day, the courts are emphatically the province to determine what the law is.

Now, the full right to impeach does not carry with it the sole right to determine what the Constitution means. It does not make us the sole arbitrator of the Constitution. There is a bootstrap operation here, ladies and gentlemen, and we are in effect trying to say to the President that if you do not agree with our view of the Constitution we are going to impeach you. Now, that is not a reasonable position to take.

The court, in Nixon against Sirica the other day said this: "If a President concludes that compliance with a subpoena would be injurious to the public interest he may properly

invoke a claim of privilege." That is exactly what the President did.

And it will reflect no credit on this Committee if we try to impeach him for doing that.

The Chair notes that there is a roll call vote in process on the Floor, and the Chair will recess the Committee and continue the debate on this question and the recognition of members at 2:00.

TUESDAY, JULY 30, 1974

SECOND SESSION

Chairman: The committee will come to order.

At the time the Committee recessed we were still considering the McClory Article III, as amended....

Eilberg: Mr. Chairman, I think there is no justifiable defense for the President's refusal to comply with the subpoenas. I respectfully submit that if members now considering voting against approving this Article of Impeachment did not think the President should be disciplined or punished for refusing to comply with the subpoenas, why did they vote for them in the first place? Is it not true that subpoenas are demands backed up by the threat of punishment for noncompliance?

If not by impeachment, how can the President, as a practical matter, and I emphasize practical matter, be disciplined or punished for noncompliance? At no time has any reasonable argument been advanced for the President's refusal.

* * * * *

No argument has been made which justifies any right of executive privilege in an impeachment inquiry. No legal scholar of which I am aware, past or present, has argued that the President has the right to limit an impeachment inquiry into his conduct in any way except possibly by pleading the Fifth Amendment.

However, the President's lawyer, James St. Clair, said at his press conference last week that the President would not claim the Fifth Amendment.

By failure to adopt Article III, we shall be unleashing a Presidency which has no limitations. The Framers of the Constitution put the power of impeachment into the Constitution to provide a check on the President. They knew that a Presi-

dent who could not be called to account for his actions might become a dictator, and if we do not impeach Richard Nixon for not cooperating with this investigation, we shall be giving up at least some of Congress' right to question the President's action.

Butler: In my judgment we will have placed after adoption of Articles I and II by the House of Representatives, we will have placed the issue of Presidential conduct sufficiently before the Senate of the United States for a determination of whether the President should be continued in office or not. And any additional articles would extend the proceeding unnecessarily. We do not need this article, and it serves no useful purpose to pursue it, and I would recommend against it.

The principal problem for me with reference to this article is whether the conduct standing alone is an impeachable offense under the Constitution. I think not. I am concerned, however, that what we do in substance by Article III is to impeach a President for a failure to cooperate in his own impeachment, and to me that is basically unfair. In my judgment the House of Representatives has a responsibility to go further down the road than we have at this moment before we impeach the President for his noncompliance with our subpoenas.

I would prefer that our determination be affirmed by the courts in an appropriate proceeding, or at least by a preliminary determination of a contempt in an appropriate proceeding before the House.

... This article offends my sense of fair play, and I intend to vote against it.

Danielson: Mr. Chairman, I support this article of impeachment and I would like to point out that the power of Congress to subpoena any and every document from the President in the case of impeachment has been established as far back as 1792 by President George Washington, and was restated in 1796, by President Tyler in 1843, President Polk in 1846, President Grant in 1876, President Cleveland in 1886, Theodore Roosevelt in 1909, and Franklin D. Roosevelt in an opinion by his attorney general in 1941.

I submit that we should continue to assert this very important right and responsibility of the House.

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Cohen: I would like to point out initially that whether this article passes or fails, I want to make it clear that this member of that fragile coalition intends to remain firm in his adherences to Articles I and II.

The able gentleman from California, Mr. Wiggins, suggested that this article is logically inconsistent with a vote for Articles I and II and I simply cannot agree with that statement.

* * * * *

... to conclude that the evidence was insufficient for the Committee to reach a decision does not mean that we were not entitled to all of the information that was relevant and that the President was not obligated to furnish it to us or that the Senate is not entitled to the evidence if they insist upon a standard of beyond a reasonable doubt.

* * * * *

I stated the other day that one of the most unfortunate aspects of this case whereby the saddest and most melancholy wounds were those that were self-inflicted has been the degradation of valuable doctrines such as Executive Privilege and national security because they in my belief, have been invoked for illegitimate purposes and I only hope the wounds are not fatal.

I believe that the withholding of the evidence was just one other example of Presidential action that was calculated to impede rather than expedite the administration of justice and that to the extent that it is not covered by Article I or by Article II, I would like to put my colleagues on notice that I would propose to introduce an amendment to include such a provision on the House Floor.

Maraziti: In a recent case, the recent case last week, the court decided that if the President felt that he must exercise a right or a privilege for the welfare of the people of this nation he should do so. And the President did exactly that in the Jaworski case and the court decided.

Now, contrary to what has been said here today, the doctrine of executive privilege is still alive. It is still a valid doctrine and the court stated that the bare exercise, the vacant exercise of the privilege is not sufficient. There must be a showing of national security interests or diplomatic considerations and so on. So, the doctrine is still valid.

Now, this Committee certainly has the right to recommend and to decide to recommend any number of Articles of Impeachment to the House. But, as Mr. Dennis has stated, this Committee does not have the right, and thank God it does not, to decide all constitutional questions and just what the Constitution means in every particular instance.

... And I submit, Mr. Chairman, that this Committee had a very, very simple solution to this dilemma. It was proposed in the Dennis motion several months ago, supported by some

of us, to join the Jaworski application and make our application, get a decision. And let me say here and now that if the court had decided that the President should exhibit those tapes and deliver those tapes to this Committee, and if he refused, I would have voted impeachment on that ground. But, failing in that, this Committee failing to take the action to support the Dennis motion and get a definitive decision, I cannot support this Article of Impeachment.

Flowers: Mr. Chairman and colleagues, I have voted for two Articles of Impeachment here because I was clearly convinced that they should have been voted for, and that the evidence and the facts justified it, although I had a great deal of reluctance. Now, here in this instance I am just as clearly convinced, but I do not have any reluctance whatsoever in voting against it. And I seriously, seriously ask that my friends on this side and the two lonesome ones on the other side that appear to be voting for it, and it is kind of lonesome over here on this side, opposing it, I ask that you consider what we are doing here.

And let us not kid ourselves. If this article were standing alone, and I think that is the way we must look at it, but if it were standing alone, would we be seriously thinking about impeaching the President of the United States for this charge alone? I honestly think not. I honestly think not.

Now, there may be some that disagree with me, but I honestly think not for the majority of this Committee, and I do not see how we can possibly approach it in any other way. Perhaps we have been too imbued with our new found power. We have been thinking too much about the House having the sole power of impeachment. I do not know what, but I just think that this is too much to impeach the President, too much for me to consider impeaching the President of the United States for. It is just not sufficient.

* * * * *

...we have not elevated this to the level of an impeachable offense by either going to the House Floor or going to the Courts, as my colleague from Illinois, Mr. Railsback, suggested. In this particular, you might argue that we are putting the cart before the horse.

I think as my colleague from Arkansas has suggested, it would be better placed in either Article I or Article II that we have already voted on. I probably would oppose it as an inclusion, but it would certainly more than likely lie in one of those articles.

Hungate: I support this article and feel more strongly about it than any other. I respect those who disagree, and as

I hear the arguments I think I know why there are no lawsuits in heaven. The other side has all of the good lawyers.

* * * * *

In democracy and republics we face different problems than totalitarian countries where rulers can dismiss the legislatures; and in republics they ignore the people's representatives at their peril.

Now, anyone can claim the Fifth Amendment and get it, and that includes the President. And I think we would not have any argument about that.

But, how are we to get evidence? We got it in this case by accident.

When you talk of the separation of powers and the confrontation we face here. I am indebted to another fine Congressman, the late George Andrews from Alabama, for my education on this subject that deeply impressed me that we do have three co-equal branches, but as Speaker McCormick used to say, all members of the Congress are equal, but some are more equal than others. I think all branches of government are equal, but some are more equal. You can become President without being elected. We have had some tragic assassinations. Lyndon B. Johnson, Andrew Johnson became President without being elected. In fact, he was never elected. You can go to the Supreme Court without being elected. You can go to the Senate without being elected. Members serve there and they are never elected, they go back and they are simply appointed.

But, you cannot come in the House of Representatives without passing before the people and being elected, and you only serve for two years. You had better be close to the people, you had better refresh your mandate. And this is some of the reason why I think the Founding Fathers put the sole power of impeachment in the Congress, the power to impeach the President in the Congress, the power to impeach the Supreme Court Justices in the Congress and the ultimate power in the case of confrontation I submit is in the body or should be in the body nearest to the people, closest to the people's control. I submit the House of Representatives is that body....

Hutchinson: It was my expectation, my hope, I would say even expectation in the beginning, that the President and the Committee could, through negotiation and discussion on the part of counsel, work out a way in which the President could voluntarily — would voluntarily make available necessary material and I joined with the Chairman of the Committee in letters to the President making such request.

I think that the President has actually turned over a lot of material to this Committee. I am not going to enumerate it all because members of the Committee are all extensively aware of the vast amount of material that has been turned over to the Committee that has come from the White House.

But in any event, when it came to subpoenaing the President, I did not think that even the power of impeachment should break down the doctrine of coordinate branches.

I think that just as the President cannot order the House of Representatives to do anything, neither do I think that the House of Representatives can order the President to do anything. I happen to feel the same way about the court. I do not—I cannot imagine that the court—that the President could order the court to do something, so it is hard for me to accept the proposition that the court can order the President to do anything.

At that level, at the very top of our structure of three coordinate branches, where the President is equal in all respects to the other two branches, I think the only way to get along is through cooperation and working things out in a satisfactory way in order to preserve the prerogatives of all three branches.

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McClory: Mr. Chairman, this Committee has urged the President to provide us with the necessary and relevant information to conclude and do a thorough and complete inquiry. We have issued the subpoenas. He has rejected those. Following the rejection of our subpoenas we warned the President in a letter of May 30th that if he did not respond, we would consider this as a ground of impeachment.

The President's counsel has urged and I think that he has urged appropriately, that charges against the President should be in separate and specific articles. This is a separate and specific article and it is a separate type of charge, it seems to me.

I hope myself that the additional evidence which will be presented, if it is presented, in the Senate or at any other time would exculpate and exonerate the President and I have kept urging that during these weeks that I have been urging the President to respond favorably to our subpoenas.

That same urging of the President has been directed by the Vice President, by the Republican leader of the House.

Now, what did the President turn over in response to our request? He turned over nothing. If it were not for the fact that we got materials from the Special Prosecutor we would not have evidence upon which to operate, to conduct our

inquiry. As a matter of fact, it would be entirely appropriate in response to the gentleman from Alabama to vote this as a sole and separate and distinct Article of Impeachment if we had received all that we had received from the President and through the President, which is virutally nothing.

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Chairman: All time has expired. The question now occurs on Article III as amended. All those in favor please signify by saying aye.

(Chorus of aye)

Chairman: All those opposed?

(Chorus of no)

Hutchinson: Mr. Chairman, I demand the ayes and nays.

Chairman: The call of the roll is demanded and the roll call is ordered and all those in favor of Article III as amended please signify by saying aye when their name is called.

Those opposed, no and the Clerk will call the roll.

The Final Vote On Article III

DEMOCRATS

Donohue aye
Brooks aye
Kastenmeier aye
Edwards aye
Hungate aye
Conyers aye
Eilberg aye
Waldie aye
Flowers nay
Mann nay
Sarbanes aye
Seiberling aye
Danielson aye
Drinan aye
Rangel aye
Jordan aye
Thornton aye
Holtzman aye
Owens aye
Mezvinsky aye
Rodino aye

REPUBLICANS

Hutchinson nay
McClory aye
Smith nay
Sandman nay
Railsback nay
Wiggins nay
Dennis nay
Fish nay
Mayne nay
Hogan aye
Butler nay
Cohen nay
Lott nay
Froelich nay
Moorhead nay
Maraziti nay
Latta nay

Chairman: The Clerk will report.

Clerk: Twenty-one members have voted aye, 17 members have voted no.

Chairman: And the amendment is agreed to and on the resolution Article III is adopted and will be reported to the House together with the Donohue resolution embodying Articles I and II.

BACKGROUND INFORMATION

Selections from the Opening Statements by Judiciary Committee Members at the Beginning of the Public Hearings, July 24-25, 1974

Peter W. Rodino, Jr. D-N.J., Chairman

Before I begin, I hope you will allow me a personal reference.

Throughout all the painstaking proceedings of this committee, I as the chairman have been guided by the simple principle that the law must deal fairly with every man. For me, this is the oldest principle of democracy. It is this simple, but great, principle that enables men to live justly and in decency in a free society. It is now almost 15 centuries since the emperor Justinian, from whose name the word "justice" is derived, established this principle for the free citizens of Rome. Seven centuries have now passed since the English barons proclaimed the same principle by compelling King John at the point of a sword to accept the great doctrine of Magna Carta — the doctrine that the king, like each of his subjects, was under God and the law.

Almost two centuries ago the founding fathers of the United States reaffirmed and refined this principle so that here all men are under the law and it is only the people who are sovereign. So speaks our Constitution. And it is under our Constitution, the supreme law of our land, that we proceed through the sole power of impeachment.

We have reached the moment when we are ready to debate resolutions whether or not the Committee on the Judiciary should recommend that the House of Representatives adopt articles calling for the impeachment of Richard M. Nixon. Make no mistake about it: this is a turning point, whatever we decide.

Our judgment is not concerned with an individual but with a system of constitutional government. It has been the history and the good fortune of the United States ever since

the founding fathers that each generation of citizens and their officials have been, within tolerable limits, faithful custodians of the Constitution and of the rule of law. For almost 200 years, every generation of Americans has taken care to preserve our system and the integrity of our institutions against the particular pressures and emergencies to which every time is subject.

This committee must now decide a question of highest constitutional importance. For more than two years there have been serious allegations by people of good faith and sound intelligence that the President — Richard M. Nixon — has committed systematic violations of the Constitution.

Last October, in the belief that such violations had in fact occurred, a number of impeachment resolutions were introduced by members of the House and referred to our committee by the Speaker. On Feb. 6, the House of Representatives by a vote of 410-4 authorized and directed the Committee on the Judiciary to investigate whether sufficient grounds exist to impeach Richard M. Nixon, President of the United States.

The Constitution specifies that the grounds for impeachment shall be not partisan considerations but evidence of treason, bribery or other high crimes and misdemeanors.

The Judiciary Committee has for seven months investigated whether or not the President has seriously abused his power, in violation of that oath and the public trust embodied in it.

We have investigated fully and completely what within our Constitution and traditions would be grounds for impeachment. For the past ten weeks, we have listened to the presentation of evidence in documentary form, to tape recordings of 19 Presidential conversations, and to the testimony of 9 witnesses before the entire Committee.

We have provided a fair opportunity for the President's Counsel to present the President's views to the Committee. We have taken care to preserve the integrity of the process in which we are engaged.

We have deliberated. We have been patient. We have been fair. Now, the American people, the House of Representatives, and the Constitution and the whole history of our Republic demand that we make up our minds.

As the English statesman Edmund Burke said during an impeachment trial in 1788: "It is by this tribunal that statesmen who abuse their power are accused by statesmen and tried by statesmen, not upon the niceties of a narrow juris-

prudence, but upon the enlarged and solid principles of state morality."

Under the Constitution and under our authorization from the House, this inquiry is neither a court of law nor a partisan proceeding. It is an inquiry, which must result in a decision — a judgment based on the facts.

In his statement of April 30, 1972, President Nixon told the American people that he had been deceived by subordinates into believing that none of the members of his Administration or his personal campaign committee were implicated in the Watergate break-in, and that none had participated in efforts to cover up that illegal activity.

A critical question this Committee must decide is whether the President was deceived by his closest political associates or whether they were in fact carrying out his policies and decisions. This question must be decided one way or the other.

In short, the Committee has to decide whether, in his statement of April 30 and other public statements, the President was telling the truth to the American people, or whether that statement and other statements were part of a pattern of conduct designed not to take care that the laws were faithfully executed, but to impede their faithful execution for his political interest and on his behalf.

There are other critical questions that must be decided. We must decide whether the President abused his power in the execution of his office.

The great wisdom of our founders entrusted this process to the collective wisdom of many men. Each of those chosen to toil for the people at the great forge of democracy — the House of Representatives — has a responsibility to exercise independent judgment. I pray that we will each act with the wisdom that compels us in the end to be but decent men who seek only the truth.

Let us also be clear. Our own public trust, our own commitment to the Constitution, is being put to the test. Such tests, historically, have come to the awareness of most peoples too late — when their rights and freedoms under law were already so far in jeopardy and eroded that it was no longer in the people's power to restore constitutional government by democratic means.

Let us go forward. Let us go forward into debate in good will, with honor and decency and with respect for the views of one another. Whatever we now decide, we must have the integrity and the decency, the will and the courage to decide rightly.

Let us leave the Constitution as unimpaired for our children as our predecessors left it to us.

Edward Hutchinson, R-Mich.

The Constitution provides that a President may be impeached and tried, convicted, and removed from office for the commission of treason, bribery or other high crimes or misdemeanors.

The meaning of the words treason and bribery are self-evident. They are crimes, high crimes directed against the state. To me the meaning of the words other high crimes or misdemeanors is equally obvious. It means what it says, that a President can be impeached for the commission of crimes and misdemeanors which like other crimes to which they are linked in the Constitution, treason and bribery, are high in the sense that they are crimes directed against or having great impact upon the system of government itself.

Thus, as I see it, the Constitution imposes two separate conditions for removal of a President. One, criminality, and two, serious impact of that criminality upon the government.

Though we might differ in judgment as to the impact on government of specific acts, I hope that we would all agree in theory at least that a significant impact on government is required.

But, some of my colleagues feel that the word crime in the Constitution does not mean crime at all, but merely any conduct which they think or feel has a significant impact on government. I suggest they are effectively abandoning altogether the only specific standard set forth in the Constitution for Presidential impeachment.

In doing so, they are left with no definite guideline at all except their own judgment of impact. In this they run the alarming risk of abusing the very trust which the founding fathers so thoughtfully, and I would like to believe, prudently placed in their hands,

Let me give an example of where the danger lies. Last night two articles of impeachment were introduced for adoption by this committee. The second of those articles has been referred to in debate you have heard as an abuse of power article. It is, in fact, a grab-bag of allegations ranging from matters of national security to the subpoenas served on the President by this Committee, from the President's administrative oversight of the Executive Departments of government, to his public addresses to the nation.

The concept underlying this proposed article seems to be that if you cannot make any single charge stick maybe you

can succeed in removing the President if you lump all of the charges together.

Let me just say that not only do I not believe that any crimes by the President have been proved beyond a reasonable doubt but I do not think the proof even approaches the lesser standards of proof which some of my colleagues, I believe, have injudiciously suggested we apply. And I do not believe that we can strengthen that proof...by making repeated demands for information from the President...which he believes in principle he cannot supply and then by trying to draw inferences from a refusal which we have fully anticipated before the demands were even made.

Now, I believe it was perfectly proper for this Committee to undertake this inquiry once serious charges of Presidential misconduct had been made, as it is the purpose of impeachment as much honorably to exonerate as to accuse. And by and large I believe this inquiry has been conducted with fairness at the direction of its able Chairman.

But, I would urge my colleagues to avoid now in this moment of judgment losing sight of the noble principles which are embodied in our great Constitution and which must guide their conscience.

Barbara Jordan, D-Tex.

Today I am an inquisitor and I believe it would not be fictional and would not overstate the solemnness that I feel right now. My faith in the Constitution is whole, it is complete, it is total, and I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution.

... It is wrong, I suggest, it is a misreading of the Constitution for any member here to assert that for a member to vote for an Article of Impeachment means that that member must be convinced that the President should be removed from office. The Constitution doesn't say that. The powers relating to impeachment are an essential check in the hands of the Executive. The division between the two branches of the legislature, the House and the Senate, assigning to the one the right to accuse and to the other the right to judge, the Framers of this Constitution were very astute. They did not make the accusers and the judges the same person.

At this point I would like to juxtapose a few of the impeachment criteria with some of the actions the President has engaged in.

Impeachment criteria. James Madison, from the Virginia Ratification Convention. "If the President be connected in

any suspicious manner with any person and there be grounds to believe that he will shelter him, he may be impeached."

We have heard time and time again that the evidence reflects payment to the defendants of money. The President had knowledge that these funds were being paid and these were funds collected for the 1972 Presidential campaign.

We know that the President met with Mr. Henry Petersen 27 times to discuss matters related to Watergate and immediately thereafter met with the very persons who were implicated in the information Mr. Petersen was receiving. The words are, if the President is connected in any suspicious manner with any person and there be grounds to believe that he will shelter that person, he may be impeached.

The Carolina Ratification Convention impeachment criteria: "Those are impeachable who behave amiss or betray their public trust."

Beginning shortly after the Watergate break-in and continuing to the present time the President has engaged in a series of public statements and actions designed to thwart the lawful investigation by government prosecutors. Moreover, the President has made public announcements and assertions bearing on the Watergate case which the evidence will show he knew to be false.

These assertions, false assertions, impeachable, those who misbehave. Those who behave amiss or betray the public trust.

James Madison again at the Constitutional Convention: "A President is impeachable if he attempts to subvert the Constitution."

The Constitution charges the President with the task of taking care that the laws be faithfully executed, and yet the President has counseled his aides to commit perjury, willfully disregard the secrecy of grand jury proceedings, conceal surreptitious entry, attempt to compromise a federal judge while publicly displaying his cooperation with the processes of criminal justice.

A President is impeachable if he attempts to subvert the Constitution.

If the impeachment provision in the Constitution of the United States will not reach the offenses charged here, then perhaps that 18th Century Constitution should be abandoned to a 20th Century paper shredder...

Charles W. Sandman, D-N.J.

Now, I want to say that at the very outset. This is not a case as far as I am concerned for or against Richard Nixon. I

ran for governor in my state last year and Richard Nixon did not help me one blessed bit, so I have no reason to feel kindly toward him.

Now, secondly, this is the third time in my life that I have had to vote on whether or not someone should hold a very high office, and I think because of the coincidence it is worth telling you a little bit about it.

The first vote that I cast in my life as a public official was when I was the youngest member, newly elected, of the New Jersey State Senate. The first vote had to do with the seating of a Democrat senator and if there is anything I know it is the New Jersey election law. I listened to all of the experts from around the country testify and at that time you only needed 11 Republicans to sign a petition and that Democrat would never sit in the Senate. And we had 16 including me. I was the only Republican who voted to seat that Democrat. As a result of a long investigation, it proved I was the only Republican right. He was seated.

Sixteen years to the day later, I cast my first vote in the Congress and that was on the seating of Adam Clayton Powell. What a coincidence. It meant no difference to me whether his name was Powell, Nixon, or what it was. I voted my conscience as I understood the law, without the persuasion of the Washington Post and others. I voted as I understood the law.

I was one of only 13 Republicans and I did not want Adam seated. But under the Constitution as I understand it, the Congress did not have the right to exclude him for the reason they set forth. I was one of only 13 Republicans who voted to seat Adam Clayton Powell, purely on constitutional grounds, only one of 13. I may be one of less than that tonight, who knows, and more than that, who cares. I am doing this the way I think it should be done. This is the way I believe I pledged my oath of office, and although there were only 13 Republicans who voted to seat Adam, the United States Supreme Court said that only 13 Republicans were correct because they reversed the Congress and seated Adam.

I look back over history and I try to judge what I should do here. This is the most important thing I shall ever do in my whole life and I know it, far more important than whatever happens to me as a result of this vote, and I know history tells me that 107 years ago the country was thrown into a fit of hysteria and, in less than three days, President Johnson was impeached during that fit of hysteria. That has gone down in history as one of the darkest moments in the govern-

ment of this great nation, and I do not propose to be any part of a second blotch on the history of this great nation.

James Madison, among other things, said that a President should be impeached only for something extremely serious, which affects his capability to conduct the affairs of the nation and, because of James Madison, a word was inserted into that part of the Constitution having to do with impeachment. He was not satisfied that it could be any crime because he said it had to be a high crime, a serious one, and this is what I think we have to follow.

Walter Flowers, D-Ala.

Now, to the problem at hand, and make no mistake, my friends, here and out there, it is a terrible problem. The alternatives are clear, to vote to impeach the President of the United States on one or more of the proposed articles of impeachment, or to vote against impeachment. And there is no good solution among these alternatives. We do not have a choice that to me represents anything desirable.

I wake up nights, at least on those nights I have been able to go to sleep lately, wondering if this could not be some sordid dream. Impeach the President of the United States! The Chief Executive of our country, our Commander-in-Chief in this cruel and volatile world that we live in 1974.

And then there is the other side of the issue that I speak of. What if we failed to impeach? Do we ingrain forever in the very fabric of our Constitution a standard of conduct in our highest office that in the least is deplorable, and at worst is impeachable? This is, indeed, a terrible choice we have to make.....

The government in its role of tax collector must be above any political use....in my state in 1970 we have evidence of the White House leaking tax information, contrary to law, in an apparent attempt to affect the Governor's campaign that year.

And then most troubling to me, in the spring of 1973, Assistant Attorney General Petersen, who was really the Acting Attorney General since Mr. Kleindienst had recused himself, met repeatedly with the President and told the President what the investigation had shown as to the involvement of Haldeman, Ehrlichman, Dean and others. He urged the President to help in dealing with the investigation, and the President assured him that the information would be kept confidential. Yet not only did the President relay this information to Haldeman and Ehrlichman, who were the ones under investigation, but helped them use it to structure a plan

to defend themselves. And the President did not give Petersen the information that he himself already had. In fact, by Petersen's testimony, when he asked the President if he had information about the break-in, he was told no, even though the President had been told the facts by Dean and Ehrlichman.

Charles E. Wiggins, R-Cal.

I cannot express adequately the depth of my feeling that this case must be decided according to the law, and on no other basis. The law, you see, establishes a common metric for judging human behavior. It eliminates irrelevant subjective concerns. Under the law we cannot be concerned with alleged Presidential improprieties because that is subjective. We really cannot be concerned about the judgment of the President at any given moment of time unless that falls below the standard imposed by the law. If we were, ladies and gentlemen, to decide this case on any other basis than the law, on any other basis than the law, and the evidence applicable thereto, it occurs to me, my colleagues, that we would be doing a greater violence to the Constitution than any misconduct alleged to Richard Nixon. We have taken an oath ourselves and as we reflect upon the alleged misdeeds of the President and his constitutional responsibilities, let us not for one moment be unmindful of our own constitutional oath, and that is to decide this case according to the law, the evidence, and the Constitution as we understand its meaning. In the context of the law, Mr. Chairman, personalities become irrelevant. I am sure we all agree with that. Recently I found myself cast in the role of the President's defender. This morning I heard on television that I was his chief defender. Frankly, I wince when I am characterized thusly because that does not reflect at all my conviction. I count myself as a friend of the President and I am proud of that friendship and I cherish it, but that friendship is not going to deter me one whit from doing what is right in this case according to the law and I would hope that my colleagues share that conviction.

I am not going to attempt to state the law of this case in any great detail within the time allotted to me now but I think that it probably can be characterized in one word, fairness. Fairness is the fundamental law of these proceedings. We would be doing violence to that fundamental principle, it seems to me, if we approach these proceedings with any preconceived notions of the guilt of the President. Of course, he is entitled to a presumption of innocence.... The law

requires that we decide the case on the evidence. Nobody doubts that. On the evidence. It must trouble you, Mr. Doar, I am sure, as a possible assistant to managers in the Senate, to consider the evidence as distinguished from the material made available before this Committee. Thirty-eight books of material. My guess, Mr. Doar, you can put all of the admissible evidence in half of one book. Most of this is just immaterial. It is not evidence and it may never surface in the Senate because it is not admissible evidence.

Theories, of course, are inadequate. That is not evidence. A supposition, however persuasive, is not evidence. A bare possibility that something might have happened is not evidence.

We are told that the standard must be that the evidence is clear and convincing, clear and convincing. Well, I will accept that for purposes of argument because it must be at least that. It must be clear and not ambiguous. It must be convincing and not confused and jumbled by other facts.

Members of the House of Representatives Committee on the Judiciary

The committee's chairman is **Peter W. Rodino, Jr.**, 64, a New Jersey Democrat. He played an important role in writing the 1964 Civil Rights Act. From the beginning he was cautious about his public statements on impeachment, and he was reluctant to add the impeachment inquiry to his committee's other duties.

He was cautious that no sloppiness taint the inquiry, and while seeking to conserve and add to his influence as chairman he nonetheless yielded repeatedly to Republican pressures on procedural and other matters so that the inquiry could not be branded as partisan.

The ranking Republican on the committee is **Edward Hutchinson**, D-Mich., 59. His initial reluctance to lead his party's forces in the impeachment inquiry exceeded even Rodino's. As replacement for the retired **Clare Hoffman**, who served his southwestern Michigan district for 26 years, Hutchinson has maintained his predecessor's conservative voting record.

Second in command for the Democrats is **Harold D. Donohue**, D-Mass., a liberal and a bachelor.

Robert McClory, R-Ill., is the second-ranking Republican on the committee. He believed strongly that the inquiry

should be an open one and that the White House should not interfere in the proceedings by trying to hasten them or slow them down. He is 66 years old and a Mormon.

This is probably the last year the committee will have its most outspoken member, **Jack Brooks**, 51, a Democrat from Texas. Brooks is due to become chairman of the powerful Government Operations Committee next year after the retirement of its current chairman.

Behind Brooks in seniority is **Robert W. Kastenmeier**, D-Wis., 50, a liberal. A tall, bespectacled man, his demeanor reflects his background as a justice of the peace, and he speaks cautiously.

Don Edwards, D-Cal., 59, a youthful-looking blond, would be classified by his colleagues as a thoughtful liberal. He is one of the four members who was an FBI agent.

William L. Hungate, D-Mo., who sports a shock of stark white hair at 51, likes to joke, write satirical songs and spout homilies. But he is a hard-working moderate with a liberal bent. Hungate also is one of the handful of former prosecuting attorneys on the committee.

John Conyers, Jr., D-Mich., 44, is a liberal from Detroit, and was the first black to serve on the committee. Now there are three.

Joshua Eilberg, D-Pa., 53, was an assistant district attorney in Philadelphia before coming to Congress. A quiet man, Eilberg takes copious notes and is highly knowledgeable about impeachment.

Behind McClory in GOP seniority is another long-time member who will be leaving the committee next year, **Henry P. Smith III** of New York. Smith, has announced his retirement at the end of the current term.

Little-seen on the committee until recently was **Charles W. Sandman, Jr.**, R-N.J., 52, who missed much of the early impeachment activity while running unsuccessfully for governor of New Jersey. A conservative, Sandman is another former prosecutor, having served as city solicitor for Cape May, N.J., after returning from World War II and a German prisoner-of-war camp.

Tom Railsback, 42, of Illinois probably is the most liberal member in the GOP committee ranks. A youthful 42, he is an avid tennis player who recently broke an arm running into a wall trying to return a shot. Railsback is cited with having picked **Albert Jenner** as chief GOP counsel to the impeachment proceedings.

Charles E. Wiggins, R-Cal., and **David Dennis**, R-Ind.,

have been credited by colleagues of both parties with having the best legal minds on the committee. In the inquiry, Wiggins demonstrated outstanding ability in presenting closely reasoned arguments against impeachment. He is 46 years old; President Nixon comes from his Southern California district.

Dennis, 62, a short and distinguished-looking man who wears dark vests and rimless glasses, was born in Washington, D.C., where he also was raised. A partner in his own law firm and a prosecuting attorney in rural Indiana, he returned to the Capital as its congressman in 1969. A conservative, he delights in arguing legalities.

At the top of the junior ranks on the Democratic side is Jerome R. Waldie, 49, a liberal whose public statements sometimes appear to be aimed at helping his campaign for governor of California. He is one of 14 congressmen who have introduced impeachment resolutions.

Next are Walter Flowers of Alabama and James Mann of South Carolina, two of the more conservative Democrats on the committee.

Paul S. Sarbanes, D-Md., 40, in his second term, was a Rhodes scholar and member of Baltimore law firms. John F. Seiberling, D-Ohio, 55, was a lawyer for his family's Good-year Tire & Rubber Co.

George E. Danielson, D-Cal., 59, is a former FBI man and assistant U.S. attorney. Robert F. Drinan, D-Mass., 53, author of the first impeachment resolution against Nixon on July 31, 1973, is a Jesuit priest with impeccable liberal credentials. He was dean of the Boston College Law School at the time he was first elected in 1970.

The committee's second black, Charles B. Rangel, D-N.Y., 43, was an assistant U.S. attorney and replaced the late Adam Clayton Powell in the House. The only black woman on the committee, Barbara Jordan, D-Tex., 38, captivates audiences with her resonant voice and no-nonsense, to-the-point statements.

In addition to Mrs. Jordan there are four other Democratic freshmen on the committee. They are: Ray Thornton, 45, a former Arkansas attorney general; Elizabeth Holtzman of New York, 32, a liberal who brought Rodino to the committee chairmanship when she defeated former chairman Emmanuel Celler last year in a startling upset; Wayne Owens, 36, a likely gubernatorial candidate in Utah; and Edward Mezvinsky, 37, of Iowa, who rose to Congress after serving as legislative assistant to Rep. Neal Smith, D-Iowa.

Hamilton "Ham" Fish, Jr., R-N.Y., heads the ranks of

junior GOP members. At 47, he is the latest in a long line of congressmen from his family and served briefly in the diplomatic corps.

Wiley Mayne, 57, R-Iowa, has well-manicured looks and wears well-tailored suits. He is a former trial lawyer and FBI agent who is regarded as a conservative well able to hold his own in arguing legalities.

The fourth former FBI agent on the committee is Lawrence J. Hogan, R-Md., 45. He was a strong defender of the President, but the day before the committee public debate began, he announced on television that he would vote to recommend impeachment.

M. Caldwell Butler, 48, R-Va., replaced one of the committee's best legal minds, Richard Poff, when Poff accepted a judgeship in 1972. Delbert L. Latta of Ohio, 54, has served in Congress for 16 years. He reluctantly accepted a GOP appointment to the committee in February to replace William J. Keating, R-Ohio, who resigned.

GOP freshmen are William S. Cohen, 33, of Maine, a moderate-to-liberal who is considered a rising GOP star; Trent Lott of Mississippi, at 32 the youngest member of the committee and one of its most conservative; Harold V. Froehlich, 41, of Wisconsin, also a staunch conservative; Carlos J. Moorhead, 51, of California, a judge advocate in the Army Reserve with the rank of lieutenant colonel; and Joseph J. Maraziti, 61, of New Jersey, a former city judge.

Testimony of Alexander P. Butterfield, Former Deputy Assistant to the President, before the House Committee on the Judiciary (Excerpted)

From Testimony of Witnesses: Book I

Mr. DOAR. Now, Mr. Butterfield, would you just explain to the members of the Judiciary Committee this organizational chart as you say it really was.

Mr. BUTTERFIELD. All right. I have listed Bob Halde- man immediately under the President because there was no question in anyone's mind at any time that he was, in effect, the chief of that staff. He was far and away the closest person to the President. There was never any competition with regard to Mr. Haldeman's role. He was everything that Sherman Adams was to President Eisenhower, in my view. He was an extension of the President, in my view. I often

characterized his role as that of the assistant President rather than the Assistant to the President, although that phrase has since been attributed to Deep Throat, and I am suspected of being Deep Throat, but I am not. At any rate, that is the reason I listed him immediately under the President.

* * * * *

Mr. DOAR. Could you give to the committee an indication of the President's work habits with respect to attention to detail? As you knew it?

Mr. BUTTERFIELD. Yes; from my observations, from my having seen thousands and thousands of memoranda over this period of time — I may be using those figures loosely — hundreds and hundreds of memoranda over this period of time, from working directly with the President and Halde-man, I know him to be a detail man. But I think any successful person is a detail man to a degree. I may take some time with this, but I began giving a great deal of thought to this and have written it out. These are typical items which are of considerable concern to the President . . .

Social functions were always reviewed with him, the scenario, after they came to me from Mrs. Nixon. Each was always interested in the table arrangements. He debated whether we should have a U-shaped table or round table . . .

He debated receiving lines and whether or not he should have a receiving line prior to the entertainment for those relatively junior people in the administration who were invited to the entertainment portion of the dinners only and not to the main dinner. He wanted to see the plan, see the scenarios, he wanted to view the musical selections himself. He was very interested in whether or not salad should be served and decided that at small dinners of eight or less, the salad course should not be served . . .

Ceremonies — he was interested, of course . . .

He was interested in the press followup . . .

He spent a lot of time on gifts — gifts for congressional leaders, gifts for people who came into the Oval Office. He actually looked at the inventories of cuff links and ash trays and copies of "Six Crises," and such things as that. He worried about gifts being appropriate for people. All of this I charged up to his being especially thoughtful in that way . . .

He was interested in whether or not we should have a POW wife or another girl be the receptionist in the west lobby. He debated this point a number of times and issued instructions with regard to who the receptionist would be and how she would operate . . .

In my mind, all of these things are understandable. I

think they are all typical of a thoughtful and careful and well-disciplined man, but they certainly do bring out the fact that he was highly interested in detail.

* * * * *

Mr. BUTTERFIELD. Well, I was not a close person to the President in any way. I don't want to intimate any way that I was, but, because of my job and where I was, I was in and out frequently and could go in and out without getting his permission. But I did that very carefully and I usually knew what he was doing before I entered the office.

Mr. BUTTERFIELD. There was a very strong liaison with the committee (for the President's re-election). I think I can only state here my opinion, because I was not involved myself in the business, although it was, as I say, going on pretty much all around me.

The White House pretty much ran the committee business except for the field operations. The White House called the shots. By the White House, I mean Mr. Haldeman. With regard to strategy, with regard to tactics — I don't mean getting right down to menial details of tactics, but the committee was pretty much an extension of the political White House. After all, the President, in addition to being President — and I certainly don't have to tell you all that and I certainly don't mean to sound that way — is the leader of the party, so he cared what that committee was doing and how it was going about its business. So there was a very close liaison. There was much communication between the President personally and Mr. Mitchell on committee business, the President personally and Mr. MacGregor on committee business; Haldeman and Mitchell; Haldeman and MacGregor, and Gordon Strachan, who was Haldeman's aide or assistant for that purpose, for that liaison with the committee.

* * * * *

Mr. BUTTERFIELD. . . . He (the President) was wholly taken up with history. He would write little notes on precisely what time he finished handwriting a portion of a speech — 3:14 a.m. He made it known to me in various ways that he wanted to be sure that that 3:14 got someplace, was logged.

But he had a lot of leisure time, a lot of leisure time, as a President should, so that he can think, so that he can reflect, so that he can meditate, so he can think things out. He is a very organized individual, a very, very disciplined individual. And I think he was smart to see to it through Haldeman that he had that kind of schedule, that he was not unnecessarily bothered. That was his *modus operandi*. That is the way he liked it. And that was Haldeman's preoccupation, incidental-

ly, to see that things went in accordance with the President's likes and dislikes.

Haldeman was dedicated to that task in a very selfless way.

Mr. BUTTERFIELD. . . . But his normal communications, oral and in writing, were just to Haldeman, Ehrlichman and Kissinger. It would be quite unusual for him to communicate with anyone else — perhaps a few times to Colson during that 1972 campaign year. But almost always with Haldeman, almost always with Haldeman.

Haldeman was the alter ego. Haldeman was almost the other President. I can't emphasize that enough. Haldeman was his right-hand man. He counted so heavily on Haldeman's presence, on Haldeman being at the other end of a telephone within reach when he buzzed. So much of this was done through Bob Haldeman because so much of it had to do with the President's, what I call personal business — the writing, the trips, the itineraries, the advancing of trips, the image making. All of that business was done through Haldeman . . .

And Ehrlichman to a much less degree, the domestic area. But Ehrlichman also on legal matters, as I said earlier. He still remembered Ehrlichman as counsel to the President. He was not quite sure Ehrlichman had relinquished that title and counted on him heavily there, and occasionally on matters of domestic issues. The President didn't really receive communications from others very often, except through these three people or the staff secretary.

Mr. JENNER. During all of your time at the White House, Mr. Butterfield, and to the extent of your personal knowledge, no guessing, was there ever any occasion that came to your knowledge of Mr. Haldeman withholding any information from the President?

Mr. BUTTERFIELD. No, sir, never.

Mr. JENNER. Based upon your experience and your work in the White House, as you have testified, was there ever any indication brought to your attention, directly or indirectly, of Mr. Haldeman doing anything without the knowledge of the President?

Mr. BUTTERFIELD. Anything? Should that be qualified? The answer is yes, I do know of him doing some things without the knowledge of the President, minor things, decisions that he might make on his own relating to staff management. But, on no significant items.

Mr. JENNER. But other than that matter of character, which you have now told the committee, there was never any

other occasions brought to your attention or instances?

Mr. BUTTERFIELD. No; never.

Mr. JENNER. Or that came to your attention?

Mr. BUTTERFIELD. No; that would be out of character . . . Out of character for Mr. Haldeman, in my view, altogether out of character.

Mr. JENNER. Was there any occasion during all of the time that you were at the White House that there came to your attention that Haldeman ever did anything without the knowledge of the President?

Mr. BUTTERFIELD. No; never.

Mr. JENNER. Dealing with White House affairs?

Mr. BUTTERFIELD. No; never, nothing unilaterally at all. He was essentially — I may have said this — but an implementer. Mr. Haldeman implemented the decisions of the President as did Mr. Ehrlichman but perhaps to a lesser extent. But Haldeman especially was an implementer, because the President ran his own personal affairs. He was not a decisionmaker.

Mr. JENNER. Mr. Butterfield, would you repeat that for me? I didn't hear it.

Mr. BUTTERFIELD. I said I did not know Mr. Haldeman to be a decisionmaker. He was entirely, in my view, an implementer. I can hardly recall the decisions, any decisions that he made, unless that it was that the White House staff mess personnel would wear jackets or something along that line. He implemented the President's decisions. The President was the decisionmaker. The President was 100 per cent in charge.

Mr. ST. CLAIR. And, of course, you were not privy to all of the information that Mr. Haldeman had, were you?

Mr. BUTTERFIELD. No; I was not.

Mr. ST. CLAIR. And you were not always present when Mr. Haldeman was disclosing information to the President?

Mr. BUTTERFIELD. No; I was not.

Mr. ST. CLAIR. So; isn't the truth of the matter, sir, you cannot state that Mr. Haldeman always told the President everything he knew about?

Mr. BUTTERFIELD. No. I said it would be out of character for him, as I knew him.

Mr. ST. CLAIR. As your judgment of Mr. Haldeman's character?

Mr. BUTTERFIELD. That's right.

Mr. ST. CLAIR. And that's the sole basis of your testimony?

Mr. BUTTERFIELD. That's right. . . .

Background information White House Staff and President Nixon's Campaign Organizations Prepared by the Impeachment Inquiry Staff

On January 20, 1969 Richard Nixon was inaugurated as the 37th President of the United States. On January 21, 1969 eighty-one persons were sworn in as members of President Nixon's White House staff. H.R. Haldeman was appointed Assistant to the President. John D. Ehrlichman was appointed Counsel to the President.

From January 21, 1969 through May 19, 1973 H.R. Haldeman, who had worked for the President in political campaigns since 1956, was President Nixon's chief of staff. He was in charge of administering White House operations. He worked directly with the President in the planning of the President's daily schedule, provided the President with the information he requested from the members of his staff and the members of his administration, and relayed instructions from the President to other officers and members of the executive branch of the government. Haldeman directed the activities of the President's Appointments Secretary and the White House Staff Secretary. He received copies of memoranda and letters written by senior staff members and assistants. He established, subject to the approval of the President, the White House budget. He had no independent schedule. His schedule was that of the President. He was at the call of the President at all times. During the re-election campaign, the President's campaign organization reported to Haldeman. The President announced Haldeman's resignation on April 30, 1973. (Indicted on charges of conspiracy, obstruction of justice, and three counts of perjury in the Watergate cover-up plot.)

The following White House employees reported to Haldeman.

(a) Lawrence M. Higby was Haldeman's personal aide and his chief administrative assistant throughout Haldeman's tenure at the White House. He had worked previously for Haldeman in private business and in the 1968 Presidential campaign. Higby supervised the flow of persons, papers, telephone calls and correspondence to Haldeman, acted in Haldeman's name and traveled with him. After Haldeman's resignation, Higby transferred to the Office of Management and Budget.

(b) In March 1971 Gordon C. Strachan became Haldeman's principal political assistant. Strachan performed politi-

cal assignments for Haldeman. He supervised the White House polling operation and reported on the activities of the Republican National Committee and the Committee for the Re-election of the President (CRP). He regularly prepared political matters memoranda for Haldeman on the status of the 1972 election campaign, and often carried out decisions Haldeman made on the basis of the information they contained. After the 1972 election, Strachan was appointed to a position with the United States Information Agency. (Indicted on charges of conspiracy, obstruction of justice and lying to the Grand Jury in the Watergate cover-up plot.)

(c) In January 1969 Alexander P. Butterfield was appointed Deputy Assistant to the President. From November 1969 Butterfield's office adjoined the President's. He had responsibility for the President's daily schedule. He oversaw the administration of the White House, including the office of the Staff Secretary. He reported directly to Haldeman and functioned as Haldeman's deputy in handling the actual flow of people and papers in and out of the President's office. In March 1973 Butterfield was appointed Administrator of the Federal Aviation Administration.

(d) Dwight L. Chapin had known Haldeman previously and had worked for the President for two years before the 1968 election. In January 1969 he joined the White House staff as a Special Assistant to the President and acted as the President's Appointments Secretary. Chapin had general planning responsibility for the President's schedule and travel. He reported directly to Haldeman and, at times, to the President. Two years later Chapin was appointed Deputy Assistant to the President. He left the White House and entered private business in February 1973. (Convicted of two counts of perjury in testimony before the Watergate Grand Jury on his dealings with Donald H. Sargent. Sentenced to ten to thirty months in prison.)

(e) In January 1969 Stephen B. Bull joined the White House staff and worked under Chapin in the scheduling office. In February 1973 he was appointed a Special Assistant to the President and assumed additional responsibilities for implementing the President's daily schedule.

(f) On January 20, 1969 Hugh W. Sloan Jr. became a Staff Assistant to the President. He worked under Chapin on the planning of the President's appointments and travel. He was also assigned certain special projects. Sloan left the White House in March 1971 to join the President's re-election campaign organization. He resigned as the Treasurer of the Finance Committee to Re-elect the President (FCRP) on July 11, 1972.

(g) In July 1970 John Wesley Dean was hired by Haldeman as Counsel to the President. Dean had previously been an Associate Deputy Attorney General in the Justice Department, and his duties in the White House included working with the Justice Department. The counsel's office advised the President on technical legal problems and prepared legal opinions on issues. Dean was also assigned by Haldeman to gather information on political matters of interest to the White House. Dean normally reported to Haldeman, but on certain domestic matters he reported to Ehrlichman. Dean left the White House on April 30, 1973. (Pleaded guilty to conspiracy to obstruct justice and defraud the United States in the Watergate cover-up plot. Sentencing delayed.)

(h) In October 1970 Fred Fielding was hired as Assistant to the Counsel to the President. He became Associate Counsel in the spring of 1971. He was Dean's "principal deputy." Fielding was appointed deputy counsel in early 1973, and resigned from the President's staff on January 11, 1974.

(i) In January 1969 Herbert G. Klein was appointed to the newly created position of Director of Communications for the Executive Branch. His office handled many of the White House public relations and media activities. He and his assistants in the Office of Communications reported to Haldeman. Klein resigned from the White House on July 1, 1973.

(j) On October 7, 1969 Jeb Stuart Magruder was appointed Special Assistant to the President to work on Haldeman's staff. Later in 1969 Magruder was also named Deputy Director of Communications. He held both positions until he resigned in May 1971 to work in the President's re-election campaign organization; he later became Deputy Campaign Director of the CRP. Magruder's responsibility at the White House was public relations. He organized letter writing programs, encouraged media coverage, and formed private committees to support administration positions. (Pleaded guilty to conspiracy to obstruct justice and defraud the United States in the Watergate cover-up plot. Sentenced to ten months to four years in prison.)

(k) In December 1970 Herbert L. Porter came to the White House with the understanding that he would work in the re-election campaign. After doing advance work for about a month, Porter was offered a job by Magruder on Klein's staff. From January until May 1971 he worked as a staff assistant to the Communications Office, where he did public relations work, including scheduling speakers. Porter assumed scheduling responsibilities for the predecessor organization of CRP in May 1971. (Pleaded guilty to lying to

the FBI in investigation of the Watergate cover-up plot. Sentenced to five to fifteen months in prison, all but 30 days suspended and one year's probation.)

(l) On November 6, 1969 Charles W. Colson was named Special Counsel to the President. Colson initiated, planned and executed many White House public relations and media efforts. He was in charge of White House relations with "special interest groups" and coordinated fund-raising for Administration projects. Colson also organized political support for the President's policies. Generally, he reported to Haldeman, but he reported directly to the President on certain matters. March 10, 1973 Colson resigned from the White House. (Pleaded guilty to obstruction of justice in the Pentagon Papers trial. Sentenced to one to three years in prison and fined \$5,000.)

(m) In September 1969 Frederick C. LaRue was appointed a Special Consultant to the President. He served without pay. LaRue reported to Haldeman on the political projects he undertook for the White House. He resigned on February 15, 1972 to work in the President's re-election campaign and later became special assistant to CRP's campaign director. (Pleaded guilty to conspiracy to obstruct justice in the Watergate cover-up plot. Sentencing delayed.)

In January 1969 John D. Ehrlichman was appointed Counsel to the President. He reported primarily to Haldeman. On November 4, 1969 he became Assistant to the President for Domestic Affairs and the President's chief assistant in the White House for all domestic matters. He advised the President on policy and communicated Presidential decisions to departments and agencies. On July 1, 1970 the Domestic Council was established in the Executive Office of the President as a separate entity with its own staff and budget. Ehrlichman was appointed Executive Director. On January 20, 1973 Ehrlichman resigned this position and on January 21 joined Haldeman as one of the four general Assistants to the President. He worked in that capacity until May 19, 1973. On April 30, 1973 the President announced Ehrlichman's resignation from the White House. (Convicted of conspiracy to violate civil rights of Dr. Lewis J. Fielding, former analyst for Daniel Ellsberg, and two counts of lying to federal investigators in burglary of Fielding's Beverly Hills, Calif. office. Indicted for conspiracy, obstruction of justice and three counts of lying to federal investigators in Watergate cover-up plot.)

The following were among the members of the White House staff under Ehrlichman's supervision.

(n) In January 1969 Egil Krogh came to the White House

as a staff assistant to Ehrlichman. He was Deputy Counsel to the President from May 1969 until November 1969, when he was appointed Deputy Assistant to the President for Domestic Affairs. In July 1970 he assumed the additional position of Assistant Director of the Domestic Council. Krogh reported to Ehrlichman, except on a few matters where he reported directly to the President. Krogh's responsibilities in domestic affairs focused on law enforcement, including work with the Federal Bureau of Investigation, drug enforcement programs, and internal security matters. In July 1971 pursuant to the instructions from the President, Krogh organized the White House Special Investigations Unit (the "Plumbers"). His work with the unit continued until December 1971. In January 1973 Krogh was appointed Under Secretary of Transportation. (Pleaded guilty to conspiracy to violate civil rights of Dr. Lewis Fielding in burglary of Fielding's Beverly Hills, Calif. office. Sentenced to two to six years in prison, all but six months suspended.)

(o) In 1969 David Young came to the White House as an administrative assistant to Henry Kissinger in the National Security Council (NSC). He was Kissinger's appointments secretary. In January 1971 Young became a Special Assistant, NSC, in charge of classification and declassification of documents. In July 1971 he was transferred to Ehrlichman's staff and assigned to work with Krogh on the White House Special Investigations Unit. Young continued as an assistant to Krogh until January 1973, when he was appointed to a staff position on the Domestic Council. He left the White House in March 1973.

(p) G. Gordon Liddy became a member of the White House Special Investigations Unit in mid-July 1971. His appointment was authorized by Ehrlichman and Liddy was placed on the payroll of the Domestic Council. Liddy worked for Krogh until he resigned from the White House staff in mid-December 1971. (Convicted for conspiracy, burglary, bugging and wiretapping in Watergate break-in. Sentenced from six years and eight months to twenty years. Convicted of conspiracy to violate civil rights of Dr. Lewis J. Fielding in burglary of Fielding's office.)

He then became counsel to CRP and in March 1972 moved to a predecessor organization of FCRP. He was counsel to FCRP until June 28, 1972.

(q) In early July 1971 E. Howard Hunt started work as a White House consultant. He had been recommended by Colson and initially worked under Colson's supervision. In July 1971 Hunt was assigned with Ehrlichman's approval to the White House Special Investigations Unit, where he worked

under Krogh's direction. Hunt had spent twenty-one years with the Central Intelligence Agency. (Convicted for conspiracy, burglary, bugging and wiretapping in Watergate break-in. Sentenced from thirty months to eight years in prison and a \$10,000 fine.)

(r) In late November 1968 Edward L. Morgan started working for Ehrlichman to coordinate some of the President's personal affairs. He was in the White House under Ehrlichman as Deputy Counsel to the President, Deputy Assistant to the President for Domestic Affairs, and Assistant Director of the Domestic Council. Morgan left the White House in January 1973 and became an Assistant Secretary of the Treasury.

(s) On April 8, 1969 John J. Caulfield, a former New York City police detective, was hired by Ehrlichman as a staff assistant to the Counsel to the President. His duties were to act as liaison with federal law enforcement agencies and to supervise White House investigations. Ehrlichman ordered the investigations Caulfield directed; later, when Dean became counsel to the President, Caulfield received assignments from both Ehrlichman and Dean. In March 1972 Caulfield left the White House to work for CRP. On April 28, 1972 he accepted a position in the Treasury Department. On July 1, 1972 Caulfield became Acting Assistant Director for Enforcement of the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service.

(t) In July 1969 Anthony T. Ulasewicz, a retired New York City police detective, was authorized by Ehrlichman to work under Caulfield to carry out investigative tasks for the White House. Ulasewicz was not directly employed by the White House, but received investigative assignments through Caulfield, and reported to him. He was paid by Herbert Kalmbach, the President's personal lawyer, from July 1969 through 1972, and worked with Kalmbach from June 1972 through September 1972.

President Nixon's Campaign Organizations

In March of 1971, after the President and Attorney General John N. Mitchell discussed the need to set up an organization to work for the President's renomination and re-election, Citizens for the Re-election of the President was organized. The President and his principal White House advisors had decided that the campaign organization and operation should be set up outside of and independent of the Republican National Committee.

Two White House assistants, Hugh Sloan and Harry

Flemming, were the initial staff at the Citizens organization. On the recommendation of Haldeman and with the concurrence of Mitchell, Magruder resigned from the White House in May 1971 to assume the position of acting Campaign Director.

In September 1971 a second campaign organization, the Committee for the Re-election of the President (CRP), was formed to manage the political aspects of the campaign. On October 1, 1971 the Finance Committee for the Re-election of President Nixon was created with Sloan as its chairman. On the same day the Citizens organization was dissolved.

On February 15, 1972 the Finance Committee for the Re-election of President Nixon was dissolved. On February 16, the Finance Committee for the Re-election of the President was formed. Maurice H. Stans, chief fundraiser for the President's 1968 campaign, resigned as Secretary of Commerce to become Chairman of this committee. Sloan became its treasurer. On April 7, 1972 this committee was in turn dissolved and was replaced by the Finance Committee to Re-elect the President (FCRP), which had been established two days earlier. Stans continued as chairman and Sloan as Treasurer.

On March 1, 1972 Mitchell resigned as Attorney General and in April 1972 became campaign director of CRP. On June 30, 1972 Mitchell resigned as Campaign Director, and Clark MacGregor, Counsel to the President for Congressional Relations, was appointed director of CRP.

White House staff members were active in the formation and operation of CRP, FCRP, and the predecessor organizations. Haldeman determined the transfer of senior or middle level people from the White House staff to the campaign organizations. He established the rules governing such transfers, and made decisions with respect to any exceptions to those rules, such as adjustments in salary.

In addition to Sloan and Flemming, who participated in forming the Citizens organization, many of the most senior members of the campaign staffs had been on the White House staff. In May 1971 Magruder and Porter joined the Citizens organization. Magruder acted as CRP chief of staff under Mitchell and became Deputy Campaign Director when MacGregor took over in July 1972. By April 1972 seventeen of twenty-three senior CRP staff members came from the White House staff or the Administration.

Haldeman approved CRP's campaign advertising. In addition, he received copies of surrogate schedules and plans and polls. Haldeman designated Strachan as his liaison with the campaign organizations. Strachan's general responsibility was to keep informed about the campaign and to be available

to answer questions Haldeman might have from the President. From mid-1971 through the campaign Strachan relayed to Haldeman information he obtained at CRP and from politically active members of the White House staff. Copies of documents submitted to Mitchell or MacGregor normally were delivered to Strachan, who attached key documents to the memoranda he prepared for Haldeman. Haldeman reviewed these political matters memoranda and indicated action to be taken. Strachan or Higby conveyed Haldeman's decision to the appropriate CRP or White House officials.

During the course of the 1972 campaign, a "political group," consisting of Mitchell, Ehrlichman, Haldeman, MacGregor, Colson, Special Counsel to the President Harry S. Dent, and Presidential aide Bryce Harlow, met on a weekly basis in the White House to formulate campaign policy and make tactical decisions. Another group led by Colson met regularly to organize responses to opposition statements and to coordinate CRP press releases and speech writing for administration supporters.

Members of the White House staff also had individual campaign responsibilities. For example, Ehrlichman analyzed the possible impact of domestic issues on the campaign and participated in the preparation of the 1972 Republican platform. Chapin coordinated scheduling for the President, his family, and members of the Administration making speeches on behalf of the President's candidacy. Colson assumed a variety of public relations responsibilities with respect to the campaign. Dean had responsibilities for CRP legal affairs and for political intelligence gathering and assisted in drafting model charters for campaign committees established to receive campaign contributions....

Beginning in 1969 Herbert Kalmbach, the President's personal lawyer, became trustee of the surplus 1968 campaign funds, which were augmented from time to time by additional contributions. The funds were maintained by Kalmbach and disbursed with Haldeman's approval. In February 1972 Haldeman directed that the major portion of the funds be transferred to the Finance Committee for the Re-election of the President. Haldeman reviewed proposed budget items in detail.

Debate on the Question: "Shall the Executive Be Removable on Impeachments?" (From the Journal of James Madison, Records of the Federal Convention, Friday, July 20, 1787).

"To be removable on impeachment and conviction (for) malpractice or neglect of duty." See Resol: 9.:

Mr. Pinkney & Mr. Govr. Morris moved to strike out this part of the Resolution. Mr. P. observed. he (ought not to) be impeachable whilst in office.

Mr. Davie. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive. Mr. Wilson concurred in the necessity of making the Executive impeachable whilst in office.

Mr. Govr. Morris. He can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be sufficient proof of his innocence. Besides who is to impeach? Is the impeachment to suspend his functions. If it is not the mischief will go on. If it is the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

Col. Mason. No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors. There had been much debate & difficulty as to the mode of chusing the Executive. He approved of that which had been adopted at first, namely of referring the appointment to the Natl. Legislature. One objection agst. Electors was the danger of their being corrupted by the Candidates: & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?

Docr. Franklin was for retaining the clause as favorable to the executive. History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out agst this as unconstitutional. What was the practice before this in cases where the chief magistrate rendered himself obnoxious? Why recourse was had to assas-

sination in wch. he was not only deprived of his life but of the opportunity of vindicating his character. It wd. be the best way therefore to provide in the Constitution for the regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused.

Mr. Govr Morris admits corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined:

Mr. (Madison)—thought it indispensable that some provision should be made for defending the Community against the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislative or of any other public body, holding offices of limited duration. It could not be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity & honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members, would maintain the integrity and fidelity of the body. In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

Mr. Pinkney did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature who would in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

Mr. Gerry urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maximum would never be adopted here that the chief Magistrate could do no wrong.

Mr. King expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Govts. should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary. Would this be the

case if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places not for a limited time, but during good behaviour. It is necessary therefore that a forum should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour? —The Executive was to hold his place for a limited term like the members of the Legislature; Like them particularly the Senate whose members would continue in appointment the same term of 6 years he would periodically be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he hold his office during a good behavior, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised; But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.

Mr. Randolph. The propriety of impeachments was a favorite principle with him; Guilt wherever found ought to be punished. The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Col Hamilton) of composing a forum out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just grounds of impeachment existed.

Doctr. Franklin mentioned the case of the Prince of Orange during the late war. An agreement was made between France & Holland; by which their two fleets were to unite at a certain time & place. The Du(t)ch fleet did not appear. Every body began to wonder at it. At length it was suspected that the Statholder was at the bottom of the matter. This suspicion prevailed more & more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities & contentions. Had he been impeachable,

a regular & peaceable inquiry would have taken place and he would if guilty have been duly punished, if innocent restored to the confidence of the public.

Mr. King remarked that the case of the Statholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behaviour. In the latter they are unnecessary; the periodical responsibility to the electors being an equivalent security.

Mr. Wilson observed that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment & removal.

Mr. Pinkney apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him: (He presumed) that his powers would be so circumscribed as to render impeachments unnecessary.

Mr. Govr. Morris's opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst it by displacing him. One would think the King of England well secured agst bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery; Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime-Minister. The people are the King. When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.

(It was moved & 2ded. to postpone the question of impeachments which was negatived. Mas. & S. Carolina only being ay.)

On ye. Question, Shall the Executive be removeable on impeachments?

Mas. no. Ct. ay. N.J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N.C. ay. S.C. no. Geo-ay-(Ayes—8; noes—2).

(On September 8, 1787, the impeachment clause came

before the entire Convention again. It had emerged from committee with the phrase "malpractice or neglect of duty" removed; treason and bribery were the only grounds given for impeachment).

The following debate then occurred:

The clause referring to the Senate, the trial of impeachments agst. the President, for Treason & bribery, was taken up.

Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined—As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He movd. to add after "bribery" "or maladministration." Mr. Gerry seconded him—

Mr Madison. So vague a term will be equivalent to a tenure during the pleasure of the Senate.

Mr Govr Morris, it will not be put in force & can do no harm—An election of every four years will prevent maladministration.

Col. Mason withdrew "maladministration" & substitutes "other high crimes & misdemeanors" (agst. the State")

On the question thus altered

N.H.—ay. Mas.—ay. Ct.—ay. (N.J. no) Pa no. Del. no. Md ay. Va. ay. N.C. ay. S.C. ay. Geo. ay. (Ayes—8; noes—3).

(The bills of attainder mentioned by Col. Mason were laws passed by the British Parliament which made criminal some past conduct of a specific person, usually a public official. Parliament did not have to show that the conduct was criminal when it occurred. The bill of attainder was often used by Parliament to punish an official who appeared to be gathering too much power or abusing power in some way that diminished the prerogatives of Parliament or that harmed the English people. The bill of attainder and its close relative, the ex post facto law, are specifically forbidden by the U.S. Constitution (Article 1, Section 10).)

IMPEACHMENT IN THE CONSTITUTION

The following are the provisions in the Constitution relevant to impeachment.

ARTICLE I

Section 2

(5) The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3

(6) The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

(7) Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

Section 9

(3) No Bill of Attainder or ex post facto Law shall be passed.

Section 10. (1) No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligations of Contracts, or grant any Title of Nobility.

ARTICLE II

Section I.

(8) Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2 (1)

he shall have the Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

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Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; *he shall take Care that the Laws be faithfully executed*, and shall Commission all the officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

Section 2. (1) *The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties made or which shall be made, under their Authority.*

(2) In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

(3) The trial of all Crimes, *except in Cases of Impeachment*, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

The Impeachment and Trial of Andrew Johnson

The political and historical analogies between the impeachment of President Andrew Johnson, in 1868, and the proposed impeachment of President Nixon in 1974 are not striking.

On the assassination of Abraham Lincoln in April of 1865, his vice president succeeded to the White House. At the beginning of the Civil War Johnson had been a Democratic Senator from Tennessee; he was the only Southern senator to oppose secession. But he was no Abolitionist; it was his position that slavery should not be outlawed in those states where it was legal before the war. Most of Tennessee was seized by Confederate troops. After Grant had retaken the western portion of the state, Lincoln appointed Johnson military governor of Tennessee, a position in which he did so well that in 1864 Lincoln chose him as his vice president.

The North was increasingly dominated by Republican extremists who not only wanted to make sure that slavery did not reappear after abolition, but were bent on punishing the South long after the shooting stopped. On the other hand, Johnson, like Lincoln, believed in reconciliation between North and South. But Johnson was not the negotiator that Lincoln was, and his character was flawed by inflexibility in his dealings with political opponents. To add to his difficulties, he lacked a political base within the dominant Republican Party.

The President and the Radical Republicans were soon at loggerheads. While the Congress wanted the Fourteenth Amendment enacted, Johnson opposed it, and even urged the State of Alabama not to ratify it—an action which infuriated his Republican opponents. After the Radical Republican sweep in the congressional elections of 1866, Johnson's vetoes were overridden and he was prevented from appointing new justices of the Supreme Court; indeed, he was frustrated at every turn. (Nixon, by contrast, has a remarkable record of having his vetoes sustained.) In 1867 he vetoed both the Tenure of Office Act and the Reconstruction Act; Congress overrode both vetoes. Under the former, he was forbidden to dismiss cabinet-level officeholders without the consent of the Senate. The Reconstruction Act divided the South into military districts and provided for military rule.

The President correctly suspected the Secretary of War, Edwin M. Stanton, a holdover from the Lincoln years, of conspiring with his congressional enemies against him. Evidently deciding to force the issue of impeachment (which was already being proposed), the President dismissed Stanton and thus provided his enemies with what they believed to be grounds for impeachment and conviction, since the removal of the cabinet officer was in apparent violation of the Tenure of Office Act. The House Committee on Reconstruction quickly recommended impeachment, and the House voted to appoint a committee to draw up articles of impeachment. The

articles, eleven in all, were adopted on March 2nd and 3rd, 1868, and the trial opened in the Senate on March 30th.

With Chief Justice Salmon P. Chase presiding, the trial lasted through several weeks of debate, much of it acrimonious and obviously political. There have been many charges that the trial was conducted unfairly. Even the Chief Justice, who was repeatedly overridden on the admissibility of evidence, said that the vote to exclude certain evidence for the defense went so far as to give the impression that the Congress had placed itself above the Constitution. Finally, on May 16, a vote was taken on the eleventh article, considered most likely to result in conviction. With 36 votes needed to convict, the count was 35 for conviction and 19 for acquittal. Soon thereafter the trial was concluded without removing Johnson from office.

Raoul Berger, in his book *Impeachment: the Constitutional problems* (Harvard University Press, 1974) says that to his mind the impeachment and trial of Andrew Johnson represented "a gross abuse of the impeachment process, an attempt to punish the President for differing with and obstructing the policy of Congress. It was the culmination of a sustained effort to make him subservient to Congress . . ."

Not the least striking difference between the cases of Andrew Johnson and Richard M. Nixon is that the movement against President Johnson, leading up to his trial, was a political response to the President's own visible actions, such as those related to reconstruction, while the visible beginnings of the case against President Nixon were far down the political ladder, in the break-in at the Watergate complex.

HOW A PRESIDENT IS IMPEACHED AND TRIED

The procedures to be followed in the impeachment and trial of a president are dictated by the Constitution, the rules of the House and Senate, tradition, and common sense. Unavoidably, also, politics enters into the results; the authors of the Constitution clearly understood the advantages and limitations of this fact when they provided for impeachment and trial by the Congress. Weighing one thing against another, they determined that it was better to use the political side of government for the purpose of impeachment rather than the courts.

The Constitution provides that a president shall first be impeached by the House of Representatives and then tried by the Senate. An impeachment is parallel and similar to an indictment drawn up by a grand jury. In impeachments, a resolution to impeach is ordinarily first introduced on the

floor of the House; if the House so decides, this is then passed along to a committee to examine the possible reasons for impeachment. If these reasons are found sufficient by the committee, it may draw up articles of impeachment.

The committee may use its own legal staff as its counsel in the matter, or it may employ a special staff. If the committee goes so far as to draw up articles (it could stop short, on the ground that insufficient cause existed), these would be debated by the committee before a formal vote on each article.

If the committee approves of one or more articles, it sends these to the House, which may drop articles or approve them. It can also amend them or even add one or more, though the chance that any would be added is remote, since an added article would not have had the approval of the committee that heard the evidence, and thus would be on weak ground when it came before the Senate. Approval of any article is by simple majority vote of those present.

In the case of Richard M. Nixon, the several resolutions calling for impeachment were referred to the House Committee on the Judiciary for investigation and possible further action. Before drawing up proposed articles of impeachment, and before its formal debate, the committee, through its large special impeachment staff, reviewed an enormous amount of evidence, including tapes, White House edited transcripts of tapes, direct testimony, and documentary evidence and records of sworn testimony introduced in court proceedings and before the so-called Watergate Committee of the Senate.

In the House, a quorum is a majority (218) of all the members (435), so that if attendance were light, only 110 members voting "aye" could theoretically be a legal majority of those present, and could impeach. In practice, congressmen would have a hard time explaining their absence to their constituents, so it is likely that nearly all would be in attendance.

Upon approval of articles of impeachment, the House names a "manager" or a committee of up to five managers to serve as prosecutors in the Senate. In the present case, if the process reaches this stage, it is likely that Chairman Rodino would be the chief manager, and that the committee of managers would include both Republicans and Democrats, in order to assure the strongest possible case being made to both parties in the Senate. After the articles of impeachment are signed by the Speaker, they are conveyed to the Senate by the managers where they are read aloud by a manager standing in the well of the Senate; in the present case, the reader would most likely be Rodino. While he may ask that

the defendant be made to appear, that has become a formality, since the Senate long ago decided it lacked such powers.

The articles of impeachment are transmitted by the Senate to the President in a subpoena; he may choose to answer them individually in legal briefs.

One of the Senate's first items of business on receipt of articles of impeachment is to organize itself for the trial, which would be roughly similar to an ordinary court case. Since the case is that of a president, the Chief Justice of the Supreme Court presides. Upon his appearance at the door of the Senate, the Chief Justice will be escorted to his seat by a specially chosen committee of the Senate. He will then be sworn in, taking a special oath to "do impartial justice according to the Constitution and the laws. So help me God." Once sworn, he will administer the same oath to each member of the Senate individually.

In the trial, which would be open to the public and might take six weeks, more or less, the President would have the right to be represented by counsel, who could question and cross-examine witnesses. At the end of a trial, the Senate votes on each article separately, in any order it might choose, or it may decide not to vote on some or any. In the unlikely event that the Congress adjourned its session during the trial, the trial would resume at the opening of the next session, in January.

Senate Rules of Procedure and Practice When Sitting for Impeachment Trials

Following are the major provisions of rules used by the Senate during impeachment trials. With the exception of Rule XI, which was adopted May 28, 1935, the rules have remained unchanged since their adoption March 2, 1868, for the trial of President Johnson.

I. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

II. When the managers of an impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant

at Arms to make proclamation . . . after which the articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles and shall continue in session from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the members of the Senate then present and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the Supreme Court of the United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the Presiding Officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein.

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, executive and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The Presiding Officer of the Senate shall direct all

necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the members present, when the same shall be taken.

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as herein before provided, a writ of summons shall issue to the accused, reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person accused, or if that can not conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be, in the judgment of the Senate, impracticable, notice to the accused to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12:30 o'clock afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an

oath to the returning officer . . . Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, the same shall be recorded.

XI. That in the trial of any impeachment the Presiding Officer of the Senate, upon the order of the Senate, shall appoint a committee of twelve senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materially, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

XII. At 12:30 o'clock afternoon of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of—, in the Senate Chamber, which chamber is prepared with accommodations for the reception of the House of Representatives.

XIII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock p.m.; and when the hour for such thing shall arrive, the Presiding Officer of the Senate shall so announce; and thereupon the Presiding Officer upon such

trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIV. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

XV. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

XVI. All motions made by the parties or their counsel shall be addressed to the Presiding Officer, and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary's table.

XVII. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XVIII. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

XIX. If a Senator wishes a question to be put to a witness, or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer.

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions.

XXI. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour on each side, unless the Senate shall, by order, extend the time.

XXII. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

XXIII. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of

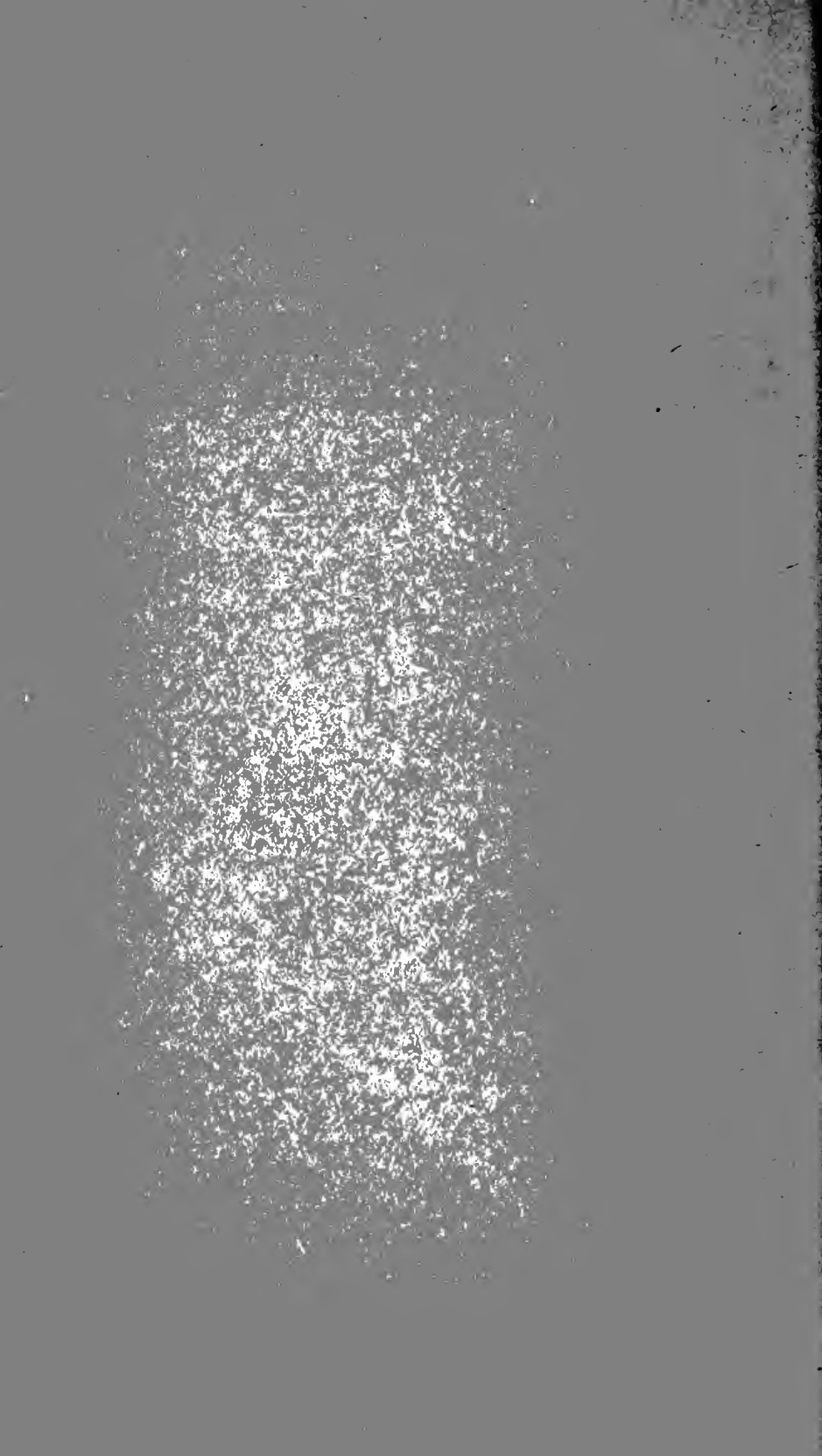
such judgment shall be deposited in the office of the Secretary of State.

XXIV. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question; and not on the final question on each article of impeachment.

XXV. Witnesses shall be sworn . . . Which oath shall be administered by the Secretary, or any other duly authorized person.

All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the court.

XXVI. If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.



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THE FACTS AND EVIDENCE PRESENTED,
THE DEBATE AND VOTE**

**IMPEACHMENT PROCEDURES
IN THE HOUSE AND SENATE AND
THE HISTORICAL BACKGROUND**

**WITH INTRODUCTION BY HELEN THOMAS,
U.P.I. WHITE HOUSE REPORTER**